**Information Sheet on Vacation Entitlement**

1. **Entitlement and duration**

The wage agreement from 9 March 2013 introduced new regulations regarding the entitlement to and duration of vacation. Public employees working five days a week are entitled to 30 working days of paid vacation annually, regardless of their age. In order for an employee to be entitled to the entire 30 days, the employment relationship must be in existence on 1 January of the vacation year.

If working time is distributed differently, the number of vacation days the employee is entitled to is either increased or decreased in accordance with section 26 subsection 1 sentence 4 of the Collective Agreement for Public Service Employees of the German Länder (TV-L).

**Example:**

An employee regularly works 3 days a week.

Calculating the vacation an employee is entitled to: 30 : 5 x 3 = 18 vacation days

An employee regularly works 6 days a week.

Calculating the vacation an employee is entitled to: 30 : 5 x 6 = 36 vacation days

If **weekly working hours or working days of the current employment are increased or decreased**, entitlement to vacation is to be calculated separately.

**Examples:**

1. **Switching from full-time to part-time employment**

A full-time employee works five days per calendar week. As of 1 September he/she will work three days per calendar week as a part-time employee.

For January to August

Proportionally 20 vacation days (30 : 12 x 8)

No reduction according to section 26 subsection 1 sentence 4 TV-L regarding the

vacation entitlement during full-time employment 🡺 20 days

For September to December

Proportionally 10 vacation days (30 : 12 x 4)

Reduction according to section 26 subsection 1 sentence 4 TV-L to three fifths (10 : 5 x 3) 🡺 6 days

Total vacation 🡺 26 days

1. **Switching from part-time to full-time employment**

A part-time employee works three days per calendar week. As of 1 September he/she switches to full-time employment and works five days per calendar week.

For January to August

Proportionally 20 vacation days (30 : 12 x 8)

Reduction according to section 26 subsection 1 sentence 4 TV-L to three fifth (20 :5 x 3) 🡺 12 days

For September to December

Proportionally 10 vacation days (30 : 12 X 4)

No reduction according to section 26 subsection 1 sentence 4 TV-L

 due to full-time employment as of September 🡺 10 days

 Total vacation 🡺 22 days

Vacation days that have already been taken are to be deducted from the respective vacation entitlement. Since the entitlement to vacation during the periods of full-time employment is not reduced, the deduction is to be done without further conversion.

Employees are to be given the chance to take the vacation days accumulated up to this point before switching from full-time to part-time employment or vice versa.

If, after calculating the vacation days, there is a remainder of at least half a vacation day, it is rounded up to a full day. Remainders amounting to less than half a day are not taken into account.

1. **Qualifying period**

Vacation entitlement is granted in full for the first time after the first six months of the employment.

1. **Beginning or end of the employment relationship within the calendar year/**

 **minimum number of vacation days**

If the employment relationship begins or ends during the year, the vacation entitlement stipulated in the collective agreement amounts to 1/12 for each full month of employment (not calendar month); this also applies in cases where the employment relationship ends due to regular retirement or retirement in case of reduced earning capacity.

After being employed for more than 6 months, all employees, regardless of their entitlement under the collective agreement, are entitled to 20 working days of statutory minimum vacation per calendar year.

Therefore, employees whose employment started in June of the current year and who are employed at least until the end of the calendar year are also entitled to a statutory minimum vacation of 20 days.

Equally, employees leaving in July of the current year are also entitled to a statutory minimum vacation of 20 days, provided that the employment has been in existence at least since the beginning of the calendar year.

1. **Expiration and transfer of vacation days**

Vacation is to be granted during the current calendar year but does not need to be taken all at once. If vacation is not taken during the calendar year it was granted but transferred to the following calendar year, it has to be taken by 30 September (section 26 subsection 2(a) in conjunction with section 40, no 7 TV L). Vacation days, which have not been taken by the end of this period, expire.

In cases where vacation (possibly including additional vacation for severely disabled employees) cannot be taken by 30 September of the following year due to (long term) sickness, regulations regarding the expiration and transfer of vacation in case of inability to work due to sickness apply.

Employees who start parental leave but have not yet taken their vacation in full or any vacation at all, may take it in the current or the following vacation year after their parental leave.

1. **Suspension of the employment relationship / reduction of vacation**

Employees are also entitled to full vacation if the employment relationship is suspended on 1 January.

**5.1** However, in the following cases of suspension of the employment relationship, vacation days are reduced by a twelfth for every full calendar month of suspension according to legal provisions.

* **Suspension of the employment relationship due to parental leave**

Section 17 subsection 1 of the Federal Act on Parental Allowance and Parental Leave (BEEG), section 26 subsection 2(c) TV-L

* **Suspension of the employment relationship due to voluntary military service**

Sections 4, 16 subsection 7 of the Job Protection Act (ArbPlSchG), section 26 subsection 2(c) TV-L

* **Suspension of the employment relationship due to military service as a fixed-term soldier**

Sections 4, 16 a subsection 1 ArbPlSchG, section 26 subsection 2(c) TV-L

* **Suspension of the employment relationship due to compulsory military service abroad**

Sections 4, 16 subsection 6 ArbPlSchG, section 26 subsection 2(c) TV-L

Since **maternity leave** is considered an employment ban rather than a leave of absence, vacation entitlement is not to be reduced for maternity leave.

**5.2 Suspension of the employment relationship due to a temporary pension based on reduced earning capacity**

For every full calendar month in which the employment relationship is suspended, the (additional) vacation stipulated in the collective agreement is reduced by a twelfth in accordance with section 26 subsection 2(c) TV-L.

 However, according to the Federal Labor Court's ruling, the prohibition of deviation from a verdict of section 13 subsection 1 sentence 1 BurlG does not allow for a reduction of statutory minimum vacation through respective collective agreements. In interpreting section 7 subsection 3 sentence 3 of the Federal Leave Act (BurlG) according to European legal standards, the statutory minimum vacation expires 15 months after the end of the respective calendar year, i. e. on 31 March of the second year following the respective vacation year.

**5.3 Vacation entitlement during periods of special leave in accordance with § 28 TV-L**

Despite suspension of employment during periods of special leave in accordance with Section 28 TV-L, statutory vacation entitlements are accrued which may not be reduced in accordance with section 26 subsection 2, letter c. During special leave, the employee continues to accrue entitlements to the statutory minimum vacation and additional leave for severely disabled persons. However, the total tariff vacation entitlement pursuant to section 26 subsection 1 sentence 2 TV-L may still be reduced by one twelfth for each full calendar month of suspension.

It is therefore necessary to carry out a comparative calculation between the tariff entitlements of 1/12 per month (x⁄12 of 30) and the statutory minimum vacation entitlement of 20 working days.

**Example 1:**

Employee A was on special leave from 01 January until 30 September 2018.
The annual statutory vacation entitlement for 2018 amounts to a total of 20 working days. This entitlement is higher than the respective tariff entitlement of 8 days (30 : 12 x 3 = 7.5, rounded to 8). Hence, in accordance with the favorability principle, employee A is entitled to the higher statutory entitlement of 20 days.

**Example 2:**

Employee B was on special leave from 01 January until 31 March 2018.
In accordance with section 26, subsection 2 (c), TV-L, the employee is entitled to the respective tariff entitlement of 23 days for 2018 (30 : 12 x 9 = 22,5, rounded to 23). This is higher than the 20 days the statutory entitlement would allot. Therefore, pursuant to the favorability principle, the employee is entitled to 23 days of vacation.

1. **Expiration and transfer of vacation in case of inability to work due to**

 **sickness**

Regarding the expiration and transfer of vacation in case of inability to work due to sickness, one needs to distinguish between the statutory minimum vacation under the BurlG and the (additional) vacation as stipulated in the collective agreement of section 26 TV-L. This is necessary because, in accordance with the Federal Labor Court’s ruling regarding the statutory minimum vacation, legal requirements set by the European Union are to be taken into account. Vacation entitlements that exceed the minimum vacation can be arranged freely by the parties to a collective agreement – also with regard to limitations of (additional) vacation under the collective agreement.

The (additional) vacation also expires in case of inability to work due to sickness if the vacation is not taken by 30 September of the vacation year following the year the vacation was granted.

Regarding the statutory vacation entitlement, the following regulations apply in case of inability to work due to sickness:

If employees are not able to take their vacation of the previous year until 30 September of the current vacation year due to sickness, the statutory vacation entitlement is upheld until the end of the current vacation year (i. e. for another 3 months). The vacation entitlement expires if an employee returns to work and is able to take the vacation during this transfer period, i. e. until 31 December of the current vacation year.

If the employee is unable to work due to sickness and, therefore, still unable to take the vacation from the previous year by 31 December of the current vacation year, the entitlement finally expires, according to section 7 subsection 3 sentence 3 BurlG, by 31 March of the second calendar year following the calendar year in which the vacation was granted, i. e. 15 months after the end of the reference period.

**Example:**

An employee was unable to work due to sickness between the 22 February 2014 and 21 October 2015. She did not take vacation in 2014 and now wants to take vacation from 4 to the 22 November 2015 (15 working days).

**a) Vacation entitlement for 2014**

The **vacation entitlement under the collective agreement** amounts to 30 working days in accordance with section 26 subsection 1 TV-L. In accordance with section 26 subsection 2(a) in conjunction with section 40 number 7 TV-L, the vacation was transferred until 30 September 2015. Since the vacation was not taken until then, it expired.

The **statutory minimum vacation** amounts to 20 working days. The vacation was transferred to the year 2015 in accordance with section 7 subsection 3 BUrlG and can be taken until 30 September 2015 in accordance with section 26 subsection 2 in conjunction with section 40 number 7 TV-L. In interpreting section 7 subsection 3 BUrlG according to European legal standards, the employee can take vacation for 15 days from 4 to 22 November. Five days of vacation remain from 2014 which are (initially) limited to the (vacation) year 2015. If the remaining vacation cannot be taken by the end of the (vacation) year 2015 because of renewed inability to work due to sickness, it expires by 31 March 2016.

**b) Entitlement to vacation for 2015**

The vacation entitlement for 2015 exists in full and can be taken until 30 September 2016.

If part of the vacation has been taken prior to the sickness, it is to be deducted from the statutory minimum vacation in accordance with the Federal Labor Court’s ruling.

**Example:**

An employee was unable to work due to sickness from 22 February 2014 until 15 April 2015. He had already taken nine vacation days in 2014 and now wants to take vacation from 9 September until 26 September 2015 (14 working days)

**a) Vacation entitlement for 2014**

The **vacation under the collective agreement** amounts to 21 working days in accordance with section 26 subsection 1 TV-L. In accordance with section 26 subsection 2(a) in conjunction with section 40 number 7 TV-L, the vacation was transferred until 30 September 2015. By that time the employee had only taken 14 days of vacation, meaning that the rest of the entitlement under the collective agreement of seven days expires.

There are still eleven days of **statutory minimum vacation** left. The vacation was transferred to the year 2015 in accordance with section 7 subsection 3 BUrlG and can be taken until 30 September 2015 in accordance with section 26 subsection 2 in conjunction with section 40 number 7 TV-L. The employee can take the remaining eleven days of the statutory vacation from 9 September until 23 September. The vacation days taken between 24 and 26 September 2015 are considered (additional) vacation the employee is entitled to under the collective agreement.

**b) Entitlement to vacation for 2015**

The vacation for 2015 still exists in full and can initially be taken until 30 September 2016.

1. **Compensation for vacation**

It is not possible to be compensated for vacation during the employment relationship. Entitlement to compensation only arises after the employment relationship has been terminated, whereby it is irrelevant which party terminated the employment relationship and in which legal way.

1. **Illness during vacation**

Should an employee fall ill while on vacation, the vacation days will only be reinstated if the employee provides a medical certificate verifying the days of illness. If a medical certificate is not submitted, the period of illness will be deducted from the vacation entitlement, even if the employee is actually ill. The medical certificate must be presented immediately after the end of the vacation.