



NEWSFLASH

## Law of April 12<sup>th</sup> 2019 implementing a time savings account



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## **LAW OF APRIL 12TH 2019 IMPLEMENTING A TIME SAVINGS ACCOUNT**

The law of April 12<sup>th</sup> 2019 implementing a time savings account (hereinafter the “Law”) was published in the Memorial<sup>1</sup> on April 24<sup>th</sup> 2019.

The time savings account allows employees to capitalize working hours beyond the ordinary working time.

### **1. Beneficiaries**

Any employee linked to a company by an employment contract and with at least two years' of service may benefit from a time savings account.

### **2. Implementation**

Setting up a time savings account requires:

- a collective agreement or
- a sectoral or national inter-professional agreement: a mutual agreement is required between the employer and the staff delegation, in addition to a notification of the agreement to the Ministry for Labour.

### **3. Replenishment**

The time savings account is fed and used in hours (and not in money). The following can be added to the time savings account:

- additional days of leave granted in the event of the establishment of a work organisation plan;
- excess balances from a reference period or a flexitime system;
- overtime;
- compensatory time-off resulting from work performed on Sundays;
- compensatory time-off when a statutory holiday falls on a Sunday;
- additional leave days beyond the 26 legal days insofar as they have not yet been taken in the current year;
- a maximum of 5 days of paid recreational leave that could not be taken during the calendar year for reasons of illness of the employee, maternity leave or parental leave in order to be able to take advantage of such leave after 31 March of the following year and which, otherwise, would be lost.

### **4. Use**

To make the possibilities of using the time savings account more flexible, the Law provides that the time savings account can be used by taking paid leave full-time or part-time; in this case, the employee must work a minimum of 10 hours on average per week.

The maximum hourly balance of the time savings account is set at 1,800 hours, i.e. 45 weeks at 40 hours.

The use of the time savings account must be granted by the employer upon written request of the employee, and fixed at least one month in advance. The employer may only refuse if the service needs of the company and legitimate desires of other employees of the company do not allow it.

### **5. Employee protection**

The leave taken as a result of the use of the rights accumulated on the time savings account shall be assimilated to actual working time for the determination of the employee's annual leave and seniority.

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<sup>1</sup> Memorial A262.

In addition, during the period of use of his rights acquired on the time savings account, the employee is considered as on paid leave, and the employer is obliged to keep the absent employee's job or, if not possible, a similar one.

If the employee is on sick leave while using the accumulated rights on the time savings account, sick days are not to be considered as used leave days. In addition, when statutory holidays occur during the period of use of the time savings account, the leave is interrupted and the statutory holidays are credited back to the time savings account.

Finally, the Employment Fund shall guarantee the claims resulting from the closure of the time savings account, up to a ceiling equal to two times the reference minimum social wage, in the event of:

- bankruptcy of the employer;
- judicial initiation of collective proceedings based on the insolvency of the employer;
- judicial finding of the definitive closure of the company or establishment of the employer;
- continuation of the business by the bankruptcy trustee.

## **6. Employer's obligations**

The employer must set up a system ensuring the actual and detailed maintenance of the time savings account, and ensuring that individual consultation of the account by the employee is guaranteed at all times. The employer must also ensure that the employee can check on a monthly basis that the correct provisions have been made in the time savings account.

It is however the responsibility of the staff delegation to monitor the implementation and the proper execution of the time savings account.

## **7. Closure**

The balance of the days of leave appearing on the employee's time savings account shall be settled by payment by the employer of a compensatory allowance in the following cases:

- dismissal of the employee by the employer;
- resignation of the employee;
- termination of the employment contract or by mutual agreement;
- cessation of business as a result of the employer's death, physical incapacity or bankruptcy;
- the day on which the employee is awarded an old-age pension and at the latest at the age of 65, provided that he is entitled to an old-age pension;
- the day of the allocation to the employee of a disability pension;
- the day on which entitlement to sickness benefit ceases;
- the day of notification to the employee of the external reclassification decision;
- the day on which the recognition of the disabled person as a disabled employee is withdrawn;
- death of the employee (the compensatory allowance will be paid to the beneficiaries).

The compensatory allowance must be equal to the monetary conversion of all acquired rights multiplied by the hourly rate in effect at the time of payment.

## **8. Income tax**

The remunerated consideration for time kept in a time savings account provided for by a legal or regulatory provision, a collective agreement or any other collective employment contract is considered as income for a salaried activity.

## For more info:



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