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The month of May is known for its Belgian public holidays but what about the employer's obligations regarding such public holidays?

(A) Introduction

Traditionally, Belgium celebrates three public holidays during the month of May: namely, Labour Day, Ascension Day and Whit Monday.

The following FAQs address the possibilities for employers to employ employees during such public holidays and an employer's obligations in this respect.

(B) FAQs

1. What are the general rules with regard to employment on a public holiday?

Every employee employed under Belgian law is entitled to 10 Belgian public holidays per year.

As a rule of thumb, employees are not allowed to work on a public holiday and they are entitled to their regular salary for such public holiday.

2. What are the employer's formalities with regard to the replacement days for public holidays?

In order to grant all full-time employees 10 public holidays per year, a public holiday that coincides with a Sunday or a normal day of inactivity in the company must be replaced. This replacement day must be set on a day of regular activity in the company.

Prior to December 15 of each year, a dated and signed notification should be posted within the company including the replacement days for public holidays for the following year.

A copy of this notification should be attached to or included in the work rules.

3. Are there specific exceptions that allow employees to be employed on a public holiday?

Yes, several exceptions apply, for example in specific industries, such as the catering and hotel industry, or in flexible working regimes. In these cases, the employee is entitled to his/her regular salary and potential premiums, if this is stipulated at industry or company level. In addition, the employee is entitled to time off in lieu that should be granted within 6 weeks following the public holiday.

If employment on a public holiday concerns overtime, the employee is also entitled to legal overtime pay of 100%.

4. Should the employee's regular salary be paid by the employer in case of a suspension of the employment contract during the public holiday?

This should be assessed on a case-by-case basis. The table below comprises an overview of frequent reasons for a suspension of the employment contract together with the related payment obligations of the employer.

Where the public holiday coincides with:	The employer's payment obligations:
The employee's holidays	The normal salary is due
Illness, accident or maternity leave	The salary is only due if the public holiday occurs within 30 days following the start of the absence concerned
Educational leave, leave for compelling reasons	The salary is only due if the public holiday occurs within 14 days following the start of the absence concerned
Full-time time credit	No salary is due

5. Is the employer still obliged to pay the employee for public holidays occurring after the termination of the employment contract?

Yes, under the following circumstances the employer should still pay the salary pertaining to a public holiday that occurs after the end of the employment contract, subject to certain conditions:

- 1) This obligation applies for every termination of an employment contract, except if:
 - the employer has terminated the employment contract for serious cause attributable to the employee;
 - the employee has resigned, unless it concerns a termination of the employment contract by the employee for a serious cause attributable to the employer.
- 2) Provided that the employee is not employed by another employer during such public holiday.
- 3) Where the public holiday occurs shortly after the termination of the employment contract:
 - no salary is due for public holidays occurring after the termination of the employment contract if the employee has been employed for a period of less than 15 days within the company;
 - the salary is due for 1 public holiday that occurs within 14 days after the end of the employment contract if the employee has been employed within the company for a period of 15 days to 1 month;
 - the salary is due for all public holidays occurring within 30 days after the end of the employment contract, if the employee has been employed for a period of more than 1 month within the company.

6. How can Van Bael & Bellis assist you?

Van Bael & Bellis' employment law team can assist you in preparing the necessary documents in light of the Belgian holiday legislation, e.g., preparation of the necessary notifications and provisions to be included in the work rules. In addition, we can provide concrete advice regarding the legal possibilities of employing personnel on public holidays and all obligations associated therewith.

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