



**ANNUAL VACATION LEAVE  
DURING THE STATE OF  
NATIONAL EMERGENCY:  
ASPECTS TO BE CONSIDERED**

# Introduction

Since March 16, 2020, Peru has been immersed in a State of National Emergency, which initially led to the imposition of an order of compulsory social isolation at the national level and, subsequently, as of July 1, 2020, to the application of the so-called "focused quarantine" in certain provinces of the country.

Within the framework of this reality, it may be common the presence of various questions related to the validity of the granting of the Vacation Leave to dependent

personnel. Furthermore, the employers that are domiciled in the provinces under "focused quarantine" may have greater uncertainty about the validity of such acts. The aforementioned considering the limitations on the free transit of persons, inherent to the State of National Emergency.

In that sense, in the following lines we will proceed to answer some general questions, related to the granting and enjoyment of the Annual Vacation Leave within the framework of the State of National Emergency.



# In which cases can be agreed?

The agreements related to the enjoyment of the Annual Vacation Leave shall be governed by the traditional regulatory provisions on the subject.

However, in the case of the employers whose organizations are not enabled to resume their activities in an in-person manner, or those that are domiciled in the locations that continue under the so-called "focused quarantine", it will be relevant to mention certain clarifications.

## GENERAL APPLICATION

- ▶ The opportunity to enjoy the 30 consecutive calendar days of the Annual Vacation Leave will be fixed by mutual agreement between the employer and the employee, prior to the fulfillment of the corresponding record of working days.

However, in case no agreement can be reached, the employer may unilaterally decide the opportunity of enjoyment of the 30 consecutive calendar days which the referred social benefit grants.

- ▶ By mutual agreement between the employer and the employee, the Annual Vacation Leave may be divided as follows:
  - Fifteen calendar days, which can be enjoyed in periods of 7 and 8 uninterrupted days.
  - The rest of the vacation period, which can be enjoyed in minimum periods of up to 1 calendar day.

In this regard, it is important to emphasize that the referred division must be agreed by the parties. That is, the employer may not decide unilaterally on the division of the social benefit under comment.

## EMPLOYERS THAT ARE NOT PART OF THE NATIONAL STRATEGY OF "RESUMPTION OF ACTIVITIES"

- ▶ In case that due to the nature of the employees' functions, it is possible to implement the Remote Work or the Telework, the General Application measures previously referred to will be applicable.

In other words, the enjoyment of the Annual Vacation Leave for 30 consecutive calendar days may be fixed by mutual agreement or unilaterally.

- ▶ In case that due to the nature of the employees' functions, it is not possible to implement the Remote Work or the Telework, exceptionally, any of the following measures may be executed:
  - Grant the Vacation Leave acquired and pending of enjoyment; that is, the Vacation Leave accrued.
  - Grant the Vacation Leave in advance, on account of the vacation period to be generated in the future. For this purpose, an agreement must be concluded with the employee.

## EMPLOYERS THAT ARE DOMICILED IN THE LOCATIONS UNDER "FOCUSED QUARANTINE"

- ▶ The existence of a "focused quarantine" will not affect in any way the provisions related to the enjoyment of the Annual Vacation Leave.
- ▶ Consequently, depending on the situation in which the employers may be immersed, any of the measures referred to above will be applicable, according to each particular case.

# In which cases can be imposed?

In accordance with national regulations, in principle, the Annual Vacation Leave must be enjoyed uninterrupted for 30 consecutive calendar days.

To this end, the opportunity to enjoy this Vacation Leave will be fixed by mutual agreement between the employer and the employee, taking into account the needs of the organization's operations and the employee's own interests, after the fulfillment of the corresponding record of working days.

However, in the absence of an agreement, the employer shall be entitled to unilaterally decide over the opportunity of enjoyment of the continuous Annual Vacation Leave, through its directive power.

Therefore, independently of the existence of the State of National Emergency, employers shall be entitled to impose the enjoyment of the Annual Vacation Leave of 30 consecutive calendar days.

## TO REMEMBER

The measures related to the Annual Vacation Leave require the fulfillment of certain formalities, according to each particular case; for example, in the case of the division of the Vacation Leave, specific documentation established in the national regulations is required.

The failure to comply with the provisions related to the Annual Vacation Leave may be considered as a minor, serious or very serious infraction, which may be sanctioned with penalties ranging between 0.26 Tax Units and 52.53 Tax Units (the value of a Tax Unit amounts to PEN 4,300.00 or USD 1,250 approximately), according to the number of affected employees.

Therefore, it is highly recommended to analyze all the aspects related to the granting and enjoyment of the Annual Vacation Leave. In this way, potential risks of legal actions by employees or questioning by the Inspection Authority can be avoided.

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