

20 SPECIAL LEAVE

1. Introduction

For some special circumstances an employee does not have to utilize vacation days. For example when he or she is getting married or when a close family member has died. In principle, an employer is not obliged to pay when no work has been done (no work, no pay). However, the employee can make use of special leave. The employee should make agreements with the employer about this beforehand.

2. What is meant by special leave?

Special leave is applicable when an employee gets time off because for special circumstances, while maintaining full salary. The special circumstances under which the employee is eligible to receive payment are mentioned in article 1614c of the Civil Code.

The law utilizes the term "special circumstances" only for a number of occasions. The suitability and duration of special leave for occasions that are not stipulated by law can be arranged in a written agreement, regulation or CLA (Collective Labour Agreement).

3. Under what circumstances is an employee eligible for special leave?

According to article 1614c of the Civil Code, an employee is eligible for special leave when legal obligations have to be fulfilled and as a consequence of special circumstances.

According to law special circumstances are :

1. Child birth by the spouse of the employee,
2. Death and funeral of the housemates or close relatives in the immediate family (parents, grandparents, great grandparents, great great grandparents, children, grandchildren and great grandchildren) and in the second degree of the side line (brother, sister, brother in law, sister in law),
3. Exercising the right to vote,
4. An obligation laid down in a general decree or imposed by the government.

However, this list of circumstances is not complete.

Moreover, at the request of the employee, the employer can grant special leave in other circumstances than described in the law. In these cases it is to be decided by the employer whether circumstances justify this.

4. What is the duration of special leave?

It is stated in article 1614c of the Civil Code of the St. Maarten that an employee is eligible to receive payment for a relatively short time, to be calculated along the lines of

rationality. It is up to the parties involved how to define rationality.

In a written labour agreement, regulation or CLA the terms and conditions for special leave can be included. If there is no written statement, the employer and employee have to define the duration of the special leave by mutual agreement.

During elections, every employer is obliged to see to it that those employees who are eligible to vote will have at least four consecutive hours off with pay on the day of the election, in order to participate in the voting. This does not apply to workers who, for one reason or another, already have four consecutive hours off during the hours of the voting (08:00 – 19:00).

5. Is an employer allowed to cease payment during special leave?

During times of special leave the employer must keep paying, unless pay during special leave is excluded in a written agreement or regulation.

6. Is an employee allowed to save up special leave?

Special leave cannot be saved up. Special leave is granted on the day/moment the special circumstance arises.

An employer may not subtract special leave from the vacation days of the employee. In case the employer decides not to grant special leave, obviously the employee may decide for her- or himself to take a day off. When the employee does not have vacation days left, he may opt for an unpaid leave.

7. What happens when an employee is or becomes ill during special leave?

Special leave continues when the employee is or becomes ill during special leave. However, these days off cannot be used again after recovery from the illness.

8. Is an employee eligible for special leave for visiting a doctor or a dentist?

This is not regulated in the law. Everyone has to see a doctor, dentist, therapist or midwife once in a while. These visits cannot always occur outside working hours. The employee then has to take a couple of hours off. Some companies keep paying the employees during these hours, some do not. It may be expected from the employee to plan these visits as much as possible on their own time.

9. Some examples of special leave taken from CLA's

Some examples of special leave that are regulated in CLA's:

1. Jubilee of service
2. Marriage of an employee
3. Taking out a marriage license
4. Jubilee of the marriage
5. First holy communion or baptism

6. Moving
7. Birthday
8. Medical examination for military service
9. Severe illness of parent, spouse or child
10. Official exams
11. Disaster, flooding, fire

10. Conclusion

The law is not very clear about special leave. Besides the cases mentioned specifically (see paragraph 3 above) there are the cases that are stated in regulations or CLA's. Otherwise, employers and employees should mutually agree for which cases special leave is granted and for how long (hours or days).