

YOUR RIGHT TO CELEBRATE VACATION ALLOWANCES

by Paula Nuñez de la Peña

Finally the much awaited holiday season has arrived with trees in every corner, lights adorning every window and final preparations for Christmas Eve dinner; meat or fish, turkey or chicken, white or red wine and thousands of other questions in order to make the night perfect. It's time to get together with family and listen to the old jokes, and renowned war stories of those sat around the table. In every conversation you hear the highlights of the year, the successes, the battles won and wishes for the coming year. But if you sharpen your hearing, it's mingled with disappointments and concerns.

This time last year a member of my own family, knowing my capacity as a lawyer, let me on to one of her concerns. Her maternity leave was coinciding with her vacation time, but the company had denied her request to take her vacation at another time.

Before addressing her personal concern, I explained that Act.38 of the Workers' Statute states that all workers are entitled to a paid annual vacation period, not to be replaced by financial compensation, lasting a minimum of 30 calendar days to be fixed by collec-

tive agreement or individual contract. Companies are required to set the holiday schedule with the worker with at least two months advance notice. This must be planned annually by mutual agreement between the employer and the worker, with any disagreements being presented to the Supreme Court.

However, this did not answer her doubt as to whether she was entitled to enjoy her holidays at a separate period to that of her maternity leave. I, quite angry with the performance of the company, started to explain all kinds of details that she might not be aware of, including her rights to challenge the company's decision. I explained to her that the Spanish Supreme Court gives women the right to take their maternity leave without losing any of their vacation allowance based both on the different interests protected by the two laws as much as the inability to allow discrimination against women.

I explained that while maternity leave was in the interest of the rest needed after childbirth and the care required for the newborn child, the interests protected by annual leave were completely different, and were instead to

promote recovery, both physically and mentally, after working all year in the company. Therefore both interests must be protected equally and the company could not deny her request.

I informed her that she could not be denied from taking her annual holiday allowances at a different period to her maternity leave, as this would establish a clear discrimination between men and women, since only the latter (theoretically at least), would be discriminated against, seeing their annual leave diminished or eliminated due to their maternity leave rights.

Now calmer because she knew her doubts had been resolved and that she was entitled to claim her holidays, she began to throw a missile of questions about whether she could enjoy her holidays next year, what would happen if her holidays coincided with a period of sick leave, if she had accrued vacation and had not enjoyed it before the end of her contract... and so it continued for the night until the clock began to ring and we had to focus all our attention on following the Spanish tradition of eating twelve grapes, one for each chime.



As Head of the Labour Law Department at Lexland Abogados, **Paula Nuñez** regularly advises clients on all labour law related matters which amongst other services includes the drafting and termination of standard employee and senior executive employment contracts, bonus schemes, stock options, collective bargaining agreements and social security

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