

COMPARATIVE CHARACTERISTICS OF SOCIAL LEAVE: INTERNATIONAL AND FOREIGN EXPERIENCE

^aSVITLANA SHESTAKOVA, ^bNATALIA BONDAR, ^cIVAN KRAVCHENKO, ^dMARYNA KUZNETCOVA, ^eLIUDMYLA AKIMOVA, ^fOLEKSANDR AKIMOV

^{a,b,c,d}Sumy National Agrarian University, 160, Gerasim Kondratyev Str., 40000, Sumy, Ukraine

^eNational University of Water and Environmental Engineering, 11, Soborna Str., 33000, Rivne, Ukraine

^fInterregional Academy of Personnel Management, 2, Frometivska Str., 03039, Kyiv, Ukraine

email: ^asshestakova1@ukr.net, ^bashatana2010@ukr.net,

^cikk3kki1@gmail.com, ^doshkodorova1@ukr.net,

^el_akimova@ukr.net, ^f1970aaa@ukr.net

Abstract: The article describes theoretical and methodological aspects of the phenomenon of social leave and provides tracing of its evolution in the 21st century. Much attention is paid to the childcare leave in different countries/regions, and also innovative form of social leave is presented – creative leaves or sabbatical. Sabbaticals are considered in plane of their effects both on the employee and the company. The conclusion is made about paradigm shift in postindustrial understanding of social leaves comparing to industrial era.

Keywords: Parental leave, Performance, Sabbatical leave, Social leave.

1 Introduction

The formation of the rule of law, in which a person, his rights and freedoms are the highest value, should include such a development of labor legislation, in which the creation of legal guarantees for the fullest implementation and protection of workers' constitutional rights in the process of labor activity, including rights such as the right to rest, education, upbringing of children are enshrined. These rights are ensured, inter alia, by providing employees with various types of vacations, differentiated by purpose, procedure, and conditions of granting, duration and other criteria.

Despite the fact that, by virtue of the above, leaves are elements of various institutions of labor law, a comprehensive study of vacation as a legal concept, as well as the legal regulation of the entire set of vacations provided for by labor legislation, makes it possible to identify, along with the features that determine their differentiation, the general, what is inherent in various types of vacations, and on the basis of the knowledge gained – to improve their legal regulation. In particular, social leave is granted to employees in order to create favorable conditions for motherhood, childcare, education, meeting family and household needs, and for other social purposes.

In connection with the above, the use of the comparative legal method in this study is of particular importance, since it allows comparing the models of legal regulation of leaves adopted in different countries, to identify their inherent features, to study both positive and negative experience of legal regulation in this area, and also to better understand the originality of the national labor law, the possibilities and tendencies of its further improvement and development.

Accordingly, the object of the study is labor relations in terms of the implementation by employees of the rights to various types of vacations in accordance with the legislation of different countries.

2 Materials and Methods

Vacation as a complex legal concept that incorporates the features of various types of vacations is part of the broader concept of “non-working time”, which is a period of time provided to employees both annually and in accordance with the prevailing circumstances, for recreation, training, scientific or other creative work, as well as for family reasons and other valid reasons for a certain number of days.

The right to leave is considered as the right to use certain types of leave, derived from such constitutional rights of workers as the right to rest, education, upbringing and caring for children, etc [2, 3].

The methodological basis of the research was formed by general scientific (historical, dialectical, logical, systemic), as well as private law research methods (formal method, comparative legal).

3 Results and Discussion

As a rule, in any country, social leaves are as follows: maternity leave, to care for a child until he reaches the age of three; leave in connection with the adoption of a child; and leave granted to employees who have children or an adult child who are a person with a disability since childhood.

Most countries have also developed a modern system of legal regulation in the field of labor, including the provision and use of vacations, through legislation and other regulatory legal acts adopted in different historical periods, as well as through regularly updated social partnership agreements, collective agreements, local regulations, labor contracts, and other agreements between the employee and the employer [54].

Over the past years, legal experience has accumulated in the regulation of vacations at various levels and in different legal acts of several branches of law, orienting towards the generalization and further development of legal norms on vacations for the most optimal and differentiated reflection of them in various legal sources [57]. The national policy in the field of social vacations is also influenced by the fact whether the country has ratified the main international acts on vacations, which determine the need to improve the classification of vacations, to further systematize the legal norms that govern them in accordance with international labor law, based on the consideration of domestic legal experience and international integration processes [7, 26].

Providing employees and other individual categories of people in the employed population with various types of leaves expands their opportunities in obtaining free time from work for periodic rest and restoring the forces and working capacity spent in the labor process, as well as other non-working time for the implementation of other reasonable and respectful goals that do not contradict the law [40]. Therefore, the improvement, on a scientific basis, of the complex normative consolidation of various types of vacations, the conditions and procedure for their provision and use, should contribute to the purposeful harmonization of the system of their legal regulation for the comprehensive development of human resources.

A deep study of the concept of social leave is extremely important due to the fact that it is used in various branches of law [5; 6]. It should be noted that vacation is a stable complex legal entity, which includes various elements of legal regulation that gives it a complex intersectoral nature, due to the combination of constitutional law, labor law, administrative law, “educational” law, social security law, tax law, penal law, etc.

Consideration of the right to social leave as a subjective right of a person, of course, contributes to a comprehensive study of labor relations. From the point of view of the general theory of law, subjective law is understood as permissiveness, which imposes on other persons a certain legal obligation to act in this way. At the same time, this right can be presented as an opportunity that allows the subject to enjoy the good within the limits established by law [47].

Any subjective law, as the most important element of the content of legal relations, is the following structure: a) the possibility of permissible behavior of the entitled person himself; b) the ability to demand appropriate certain behavior from obligated persons

(counterparties in a legal relationship); c) the possibility of resorting to coercion by the state in the event of non-fulfillment or improper fulfillment of the relevant requirements by the obligated persons. Subjective law is a set of requirements and corresponding obligations of performance, based on the law and under its protection, with the provision of the necessary coercion in case of non-performance. Thus, the category "subjective right" gives answers to the questions, what opportunities and in relation to whom the entitled person has [18, 29].

An analysis of views on the concept of social leave allows concluding that the said right must be exercised as part of an employment relationship [8; 9]. An employee, entering into a specific legal relationship, receives a legal and justified opportunity to demand from a specific employer release from work for a certain number of days during the working year on appropriate conditions.

Unlike labor leaves, social leaves are provided to employees not for work in accordance with the concluded labor contract, and, therefore, do not depend on the length of service, type and place of work, etc [12, 13]. The right of employees to social leave does not depend on the duration, place and type of work, name and organizational-legal form of the organization. Social leave is provided in excess of labor leave. For this time, the previous work remains, and in cases stipulated by the Labor Code or collective agreement – also wages are preserved. In cases where wages are not maintained, social leave is granted without payment [1].

Social leave is granted for the calendar year in which the employee is entitled to it [55, 56]. If the employee has not requested the granting of such leave in the current calendar year, the social leave is not carried over to the next working year and is not replaced by monetary compensation (usually, including upon dismissal). Social leave includes the following types of it:

- Maternity leave;
- Leave to care for a child until the child reaches the age of three [58];
- Leave in connection with training;
- Leave with pay for medical treatment and other personal needs of the employee;
- Sabbatical;
- Short-term vacations without pay, which the employer is obliged to provide to the employee;
- Unpaid leave for family and household and other valid reasons, provided by agreement between the employee and the employer [49-53];
- Leave without pay or with partial pay, provided at the initiative of the employer.
- Unlike labor leave, social leaves have some distinctive features:
 - They are provided not for recreation, but for other recognized socially useful (social) purposes [60, 61];
 - The right to social leave does not depend on the duration, place, and type of work;
 - Wages for the period of social vacations are retained in the cases provided for in the Labor Code or a collective agreement;
 - All social vacations are an independent type of leaves. They are provided in excess of the labor leave together with it or separately from it.

It should be noted that most scientists support this point of view, noting that social vacations do not belong to the time of rest, since in reality there is a change in the type of activity – previously there was work, which is replaced by study, raising children, renovating an apartment, improving health, etc. [4, 11, 14].

Social leave cannot be mixed with work leave, as these are different legal categories. Social leave is a separate legal category (separate institution). This is clearly evidenced by the goals (reasons, circumstances) for which they are provided, which was mentioned above [15-17, 20].

However, in different countries, the situation with social leave is ambiguous. In particular, maternity leave is available to most young parents around the world, somewhere it lasts more than 50 weeks and is well paid, somewhere fathers are allowed to take it, and somewhere it is not available to everyone.

Today there are only nine countries in the world where there is no paid parental leave. These are Suriname, the Marshall Islands, Niue, Nauru, Palau, Papua New Guinea, Tonga, and the United States.

In the United States, women are only entitled to 12 weeks of parental leave. The legislation does not oblige employers to pay the decree. But not everyone can take it - only mothers who work in companies with more than 50 employees and subject to at least a year of experience in such an organization are entitled to leave [63-68]. Only half of working women in the United States meet these criteria. As a result, only ten percent of American women use parental leave, most of whom "save" regular leave and sick leave in order to extend the maternity leave by at least a few days [21].

The first country to legalize parental leave was Germany in 1883. It was followed by Sweden in 1891 and France in 1928. In 1919, the International Labor Organization developed and adopted guidelines for the protection of mothers and children, which were based on three fundamental principles:

- Holiday to care for the child;
- Cash payments;
- Preservation of the workplace.

In most developed European countries, maternity leave became compulsory in the 1960s for several reasons. First, states have desperately tried to raise fertility after two disastrous wars to recoup human losses. Officials hoped (justifiably) that if families were confident in maintaining jobs and stable benefits, they would have more children. Secondly, it was necessary to ensure the safety and proper level of health for women and children [19, 22-24]. Legislators realized that the sooner a mother recovers from childbirth, the sooner she will return to work. The baby's health also contributes to this. For these reasons, labor legislation has evolved continuously.

In total, there are 36 countries in the world where the total maternity leave exceeds 52 weeks [41]. The International Labor Organization recommends that women be given at least 14 weeks of maternity leave and at the same time pay an allowance of at least 2/3 of the mother's salary. According to a study by the international organization WORLD Policy Center, in many countries these conditions are still not met.

Less than 14 weeks of paid vacation is granted, for example, in Argentina, Tunisia, Egypt, and Mexico. In the countries of Central Asia and Africa, maternity leave usually lasts from 14 to 25 weeks. The same rules are in China, Israel, and Switzerland. In Europe, the most popular option is from 6 months to a year of parental leave. In Norway, for example, parents have a choice: 46 weeks of leave and keeping one hundred percent of the salary, or 56 weeks at 80 percent [59].

If we talk about the situation around the world as a whole, it is improving: about 190 countries of the world have granted women the right to parental leave. However, recent research suggests there is a downside to maternity leave [11].

In the 60s of the 20th century, when the concept of maternity leave was developed and implemented, its main tasks were to ensure safety and health for women and children. Factors such as the mother's professional competence, her career, and the possibility of going on maternity leave were not discussed.

Now the discussion about maternity leave is moving to the question of whether a woman will be able to remain in demand in the labor market after it ends [27, 28]. Increasingly, there are opinions that the impact of the decree on a woman's life can at least be different, and there is evidence of this.

According to a report by the Organization for Economic Cooperation and Development, when mothers stay at home with their children for more than two years, their chances of returning to the labor market without losing wages and career growth are greatly reduced [30-35]. At the same time, large social payments for childcare, which are available in some countries, encourage women to stay at home and reduce their motivation for professional self-realization.

A key finding from an OECD study is that if maternity leave is longer than two years, it seriously harms a woman's working life, and the best success in the profession is achieved by mothers who returned to work no later than 20 weeks after giving birth [46].

Even in Denmark, one of the most parent-friendly countries, women are paid on average 30 less than the previous salary immediately after leaving the decree. After "getting into the working rhythm", the situation does not improve, losses only decrease to 20 percent in the long term. These are the findings of a study by Danish scientists [36-39]. In France, for example, women who were on maternity leave for a year receive a salary 7-17 percent less than before the birth of a baby. In Germany - by 6-20 percent. This phenomenon is called the "maternity penalty", when mothers receive less income than childless women. In China, for example, this figure reaches 37 percent [47].

An interesting approach to remedy this situation has been proposed in Sweden. Since the mid-80s of the 20th century, "fatherly quotas" have been in effect in Sweden - the number of days in the decree, which only the father is obliged to take. In Sweden it is 60 days out of 480. If the father does not go on maternity leave, the family will lose payments. But if the father shares the entire parenting leave in half with the mother, then the parents will receive additional money. As a result: every fourth parent on maternity leave in Sweden is a father [48].

Similar legislation exists in Norway and Iceland, and the UK has introduced it since 2015. In Norway, "daddy quotas" were adopted back in 1994. There, the father is obliged to spend half of the decree with the child - 14 weeks [41]. Research suggests that Norwegian dads who are on maternity leave and spend more time with them than working dads are more likely to bathe, feed, and play with them.

Kids who grow up in a family with a father involved in upbringing have a whole list of advantages over their peers whose fathers are excluded from upbringing. For example, these children are less likely to violate the law and drop out of school, are able to avoid risky sex, have long-term relationships, and find high-paying jobs. In the future, children are unlikely to become homeless and are likely to have higher IQs than their peers by the age of three. In the longer term, they suffer from fewer psychological problems and are less prone to obesity [10].

However, the situation with the fathers' paternal leave is improving too slowly. According to the Organization for Economic Cooperation and Development, in Austria, the Czech Republic, Poland, and France, fathers make up about four percent of the number of parents who go on parental leave [59]. In Russia, it is only two percent, although 39 percent of men say they are ready to go on maternity leave; in Belarus, fathers take this leave in less than 1% of cases [69].

However, until now, only half of the countries in the world provide for a parental leave for fathers. There are several reasons for this. Perhaps the main one is the stereotypes of corporate culture. Women still earn less than men (the average difference in the world is 16 percent), so it is more profitable for the family to have a man working [59]. Social stereotypes are no less an obstacle. Men on maternity leave are still discriminated against, people are ridiculing them and accusing them of losing their masculinity.

A University of Oregon study of 6,403 men found that fathers face the same challenges on parenting leave as mothers. On

average, fathers lose 15.5 percent of their wages after such leave, and they also put themselves at risk of being demoted or fired due to the fact that they are beginning to be considered unreliable workers [46].

Meanwhile, it is of interest to trace a correlation of paid parental leaves, sources of its funding and GDP (Figure 1).

Country	Employees contribute	Employers contribute	Government contributes	GDP growth rate (%)
Ireland	X	X		6.1
Estonia		X	X	3.3
Poland	X			3.1
Sweden		X	X	2.7
Australia				2.6
New Zealand			X	2.4
Canada	X	X		2.3
United States				2.2
United Kingdom		X	X	2.0
Germany	X	X	X	2.0
Czech Republic		X	X	1.7
Hungary	X	X	X	1.7
Iceland		X	X	1.7
Norway			X	1.5
Belgium	X	X	X	1.3
Denmark		X	X	1.3
Austria		X	X	1.2
France	X	X		1.1
Netherlands		X		0.9
Slovenia	X	X	X	0.6
Finland	X	X	X	0.5
Spain	X	X		-0.2
Italy	X	X	X	-0.2
Portugal	X	X	X	-0.4
Greece	X	X	X	-4.2

Paid parental leave is leave that is leave available to either parent (including transferable maternity leave).
GDP growth rate refers to the average annual percent change in gross domestic product from 2010 to 2015.

Figure 1 – Parental leave funding and GDP growth in OECD countries

Source: Raub, A. et al. (2018). *Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries*. World Policy Analysis Center.

Figure 2 shows potential correlation of parental leave funding and unemployment in OECD countries.

Country	Employees contribute	Employers contribute	Government contributes	Unemployment rate (%)
Norway			X	3.1
Australia				4.4
Austria		X	X	4.7
Iceland		X	X	4.8
New Zealand			X	4.8
Netherlands		X		4.9
Germany	X	X	X	5.2
United Kingdom		X	X	5.5
Czech Republic		X	X	5.8
Sweden		X	X	6.0
Canada	X	X		6.1
Denmark			X	6.3
United States				6.6
Finland	X	X	X	6.8
Belgium	X	X	X	7.2
Poland	X		X	8.1
Slovenia	X	X	X	8.4
France	X	X		8.4
Hungary	X	X	X	8.8
Estonia		X	X	9.5
Italy	X	X	X	9.8
Ireland	X	X		12.0
Portugal	X	X	X	12.8
Spain	X	X		21.6
Greece	X	X	X	21.7

Paid parental leave is leave that is leave available to either parent (including transferable maternity leave).

Figure 2 – Parental leave funding and unemployment in OECD countries

Source: Raub, A. et al. (2018). *Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries*. World Policy Analysis Center.

The tables, in fact, show that there is no definite correlation between paid parental leave and country macroeconomic performance. Thus, it can be assumed that societal traditions play huge role – the USA is highly performing country with almost unavailable paid parental leave, while Greece demonstrates poor GDP and unemployment indicators in presence of both governmental and corporate financing of parental leave.

The record for maternity leave for men is held by Japan, where a father can stay at home with his child for more than 30 weeks [42-45]. In fact, however, few of the residents of this country enjoy this privilege, since it is not welcomed in companies.

An interesting phenomenon is also the so-called creative leave or sabbatical. The word “sabbatical” goes back to Hebrew “Sabbath” – this is the name of the sacred time when believers should refrain from work. Universities were the first to introduce sabbaticals, sending tired professors on paid holidays for several months. Harvard pioneered this leave in 1880. Nearly a century later, businesses followed this practice when they faced employees’ burnout. The first program of long vacations – Sabbaticals with the retention of position – was offered to its employees by McDonald’s in 1977 [57].

Usually people go on sabbatical to achieve a goal, learn something, or do research. Taking a sabbatical by one of the professionals can be an excellent test of a company’s strategic planning. If one employee goes on vacation, the company can see how well the other specialists are coping with their duties and replacing him, and take the necessary steps to improve the situation if necessary. A number of Western companies have personalized sabbatical programs to attract, retain, and develop the best employees through their personal and professional growth. The length of such leave is from 4 weeks to 12, but some companies even provide 24 and 52 weeks of sabbatical.

Since then, this practice has spread throughout the Western corporate world. Back in 2012, according to a nationwide poll, 29% of all American companies offered sabbaticals to their employees (including 11% of small businesses, employing up to 100 people) [62]. Among them, there is a large share of IT companies, which, on the one hand, are traditionally more flexible, and on the other, they are more likely to face burnout of employees working with large amounts of information. Today there are sabbaticals, for example, at Google, Intel, and IBM.

Some companies that can afford it pay all or part of the sabbatical to their employees. For example, Intel pays during this period 100% of the regular salary, Citi – 25%. Deloitte offers unpaid sabbaticals for a period of one month and “for any reason” (along with paid 3-6 months “for personal or professional growth”). In Japan, the country’s largest airline, All Nippon Airways (ANA), introduced the unpaid sabbatical program, though it promises employees a one-time payment of 200,000 yen (\$1,930). Interestingly, ANA does not mind if pilots try to work for competitors [26] during a year off, which is a great and unique opportunity to learn a competitor’s business from the inside.

The availability of payments, as well as other conditions, are discussed when agreeing on the sabbatical with the employer. As a rule, this is not an easy process, because companies, whatever they write in their PR materials, are not really eager to pay their employees a paid vacation. It is not altruism that pushes them to this, but quite pragmatic considerations.

Also, sabbatical can be a low-cost HR brand element. This is not an element of the social package that a significant number of employees will take advantage of. At the same time, the presence of the opportunity to take a long vacation in the employer’s proposal demonstrates the company’s concern for employees, respect for their interests and hobbies, that is, support for higher-order values.

4 Conclusion

Thus, it is obvious that the concept and practice of social leave is undergoing significant evolution and varies greatly across countries and regions. It seems appropriate, when studying social leave, to distinguish between their categories – parental leave, study leave, sabbatical leave, etc. In fact, we observe paradigm shift in postindustrial understanding of social leaves comparing to industrial era. It is likely that the further development of the practice of vacations will lead to the emergence of their new types and features.

The observed phenomenon can be confidently called the “post-industrial vacation phenomenon”, when the goals of social vacations are shifted from purely pragmatic social goals to innovative ones that carry great potential and create unique

competitive advantages for both companies and employees themselves. Most of the benefits from this practice are obtained by those businesses that actively compete for personnel – for example, IT companies or creative businesses: for them, non-standard ideas of employees who have been on long vacations can be very valuable.

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Primary Paper Section: A

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