

Complaint – VAUDE – Vietnam

Status: Resolved

FWF is responsible for setting up a complaints procedure in production countries where FWF is active. The complaints procedure allows third parties to make complaints about the working conditions or the way the Code of Labour Practices is implemented in factories which supply FWF members.

The responsibility of FWF includes investigating the complaint, verifying whether the agreed corrective action plan is implemented and public reporting. This complaint report gives an overview of a complaint filed to FWF, the investigation and agreed corrective action plan as well as how the outcome is verified. For more information on the complaints procedure see the FWF website. FWF also publishes an overview of complaints received in its annual reports.

1. Member company involved

VAUDE

2. Accused party

A factory located in Vietnam supplying VAUDE.

3. Date of receiving complaint

16 April 2017

4. Filing party

A worker that was employed by the factory until February 2017.

5. The complaint

The complaint is related to the unused annual leave payment for 2015 and 2016. The employee took maternity leave for 6 months from 25 February 2016. In addition she took unpaid leave for 3 months after which she resumed work in December 2016. After that, she has applied a resignation letter with giving prior notice of 45 days before ending of contract. She resigned on 12 February 2017. According to the employee she did not receive the unused annual leave payment in 2015 and 2016. The factory paid the unused annual leave for 2015 at end of April 2016 while she was on maternity leave so she could not receive it. According to the employee, she worked 3 months in 2016, so she should be entitled to at least 3 days of unused annual leave.

6. Admissibility

FWF decided that the case is admissible on 19 April 2017.

The factory is an active supplier of VAUDE, a member of FWF.

The case is relevant to the following labour standards of FWF's Code of Labour Practices:

- Payment of a living wage

7. Investigation

VAUDE informed the factory management directly and received a reply within one week. Both VAUDE and factory management acknowledge managing the payments in time has been a challenge and are working hard to improve this. An earlier complaint in the same month was related to the same issue. In this particular case the payment of unpaid leave was not paid for over year, which would be a significant amount in compensation. For that reason, FWF's complaints handler conducted additional research to confirm whether Article 96¹ of the labour code that deals with the timely payment of salary also applies to annual leave payments.

FWF's complaints handler forwarded the question to two lawyers and received support by the local authority HEPZA (Hochiminhcity Export Processing and Industrial Zones Authority). All three gave the same reply:

The salary mentioned in Article 96 includes the annual leave payment for both the days of leave that were taken as well as the unused leave days of the resigned employee.

As per Article 111 of the Labor code, the employer is entitled to regulate the annual leave schedule after consulting with the employees and must give notice to employees in advance. And the employee can agree with the employer on taking annual leave in installments or combining 03 annual leave into one leave maximally.

The Labor Code stipulates the unused annual payment at Article 114 "An employee of an enterprise who, due to job leaving, job loss or other reasons, fails to take his annual leave or has not used up all his annual leave shall be paid salary for those days not taken."

According to Article 6.7 of Decree No.45/2013/ND-CP: maternity leave (6 months) is period considered working time of employees to calculate annual leave.

When the employee resigns/terminates, the company is responsible to pay all the related interests, including remaining wages, severance allowances (if any) and the unused annual leave within 7 days from terminating the labor contract. This time limit may be longer if necessary [but must not exceed 30 days].

Article 96 will come into effect when the amount is not paid in time. And the salary bases for paying the unused leave days is the average salary of the labor contract of the preceding 06 months before resignation. This means the salary bases to pay the

¹ Article 96. Principle of salary payment

The employee is paid directly, fully and in a timely manner.

In special case the salary may not be paid in a timely manner, it must not be later than 01 month and the employer must pay the employee an additional amount at least equal to the deposit interest rates by the State Bank of Vietnam announced at the time of payment. [As per Article 26.3 of Decree No.05/2015/ND-CP: The salary on which employers base to pay for employees in untaken leave days or fully untaken annual leave days in Article 114 of the Labor Code shall be prescribed as follows: a) If employees have worked for 06 months or more, it shall be the average salary of the employment contract of the preceding 06 months before the employees terminate or lose their jobs].

balance unused leave days for the complainant will be higher than the wage bases to pay the unused leave days of 2015 when it would have been paid on 30 April 2016.

From interview the complainant, FWF's complaint handler learned the factory did not pay the severance allowance for the working time served when she did not pay unemployment insurance contributions as prescribed by law (such as probation period, maternity leave). Even though she did not raise this during the initial complaint, as she was not aware of this right, it is included in the remediation requirements.

For the complainant this means the working time served when she did not pay unemployment insurance contributions as prescribed by law is 7 months (1 month for probation and 6 months of maternity leave) and shall be rounded to 1 year [as per Article 14.3.c of Decree No.05/2015/ND-CP: Working time serving as the basis for calculating severance payments to employees shall be in years (full 12 months) and the period from 01 full month to under 06 months shall be rounded to a half of year; the period from full 06 months to 01 year shall be rounded to 1 year]. (as per Article 48.1 of the Labor Code).

A half month salary shall be paid for each working year. The salary for severance pay calculation is the average salary under the labor contract of the preceding 06 months before the employee is resigned (as per Article 48.3 of the Labor Code).

8. Findings and conclusions

Based on the above review of the Labour Code, the complaint was found grounded.

9. Remediation

1. Unused leave:

Factory must pay the unused leave payments for 2015 and 2016 according to the following calculation:

2015: 14 days of unused leave.

2016: the complainant is entitled to annual leave for 9 months in 2016 (3 months of working and 6 months of maternity leave). The complainant took maternity leave for 6 months from 25 February 2016, then took 3 months of unpaid leave from 26 August - 3 December 2016. The number of days of unused annual leave in 2016 is $14 \text{ days} / 12 \times 9 \text{ months}$ [6 months for maternity leave and 3 months of working] = 10.5 days and round up 11 days of unused annual leave. (as per Article 7 of Decree 45/2013/ND-CP, when a worker resigns but he/she has not worked for full year, the balance annual leave days equals the number of days of annual leave plus additional days off according to seniority (if any) divided by 12 months, then multiplied by the actual number of working months in the year; the result shall be rounded up if the decimal is 0.5 or bigger.)

Total days of unused annual leave in 2015 and 2016 are 25 days (14+11 = 25 days)

2. Severance allowance:

- As per Article 14.3 of Decree No.05/2015/ND-CP: Working time serving as the basis for calculating severance allowance shall be the total of actual working time

subtracted the time when the employees pay unemployment insurance contributions as prescribed by law, and the working time when severance pay is offered by the employer.

- The complainant worked at the factory from 18 August 2014 to 12 February 2017: 2 years and 5 months.

The working time served when the complainant did not pay unemployment insurance contributions is 7 months (including 1 month for probation period and 6 months for maternity leave) and shall be rounded to 1 year.

- As per Article 48.3 of The labor code: The salary for severance pay calculation is the average salary under the labor contract of the preceding 06 months before the employee is terminated.

- As per Article 48.1 of the Labor Code: the employer is responsible to provide the severance allowance to the employees that have been worked for 12 months or more. A half month salary shall be paid for each working year.

In order to come to a solution agreeable to both the complainant and factory management, a meeting was held on 21 July with FWF's complaints handler, the factory's Vice Director, HR Manager and HR officer, and VAUDE's representative in Vietnam. The complainant is working at another company and could therefore not attend the meeting. The evening before the complaints handler conducted an interview with the complainant at the hotel. The complaints handler conducted interviews with 3 other employees on site on the 21st of July.

→ From interview and documents review, it was noted that there is no evidence showing the complainant worked at the factory from 4 December 2016 to 12 February 2017. The labour contract was illegally unilaterally terminated by the complainant; she is therefore not entitled to severance allowance for the working time served when no unemployment insurance contributions are paid (such as probation period, maternity leave, etc) as per Article 43.1 of the labor code.

→ The factory agrees to pay the unused annual leave in 2015 (14 days) and in 2016 (from January to August 2016: 14 days/12month x 8 months = 9.33 days)
→ total 23.33 days

The salary bases to pay for employees in unused leave days shall be the average salary of the labor contract of the preceding 06 months before the employees terminate: The contract salary in 2016 is 2,696,400VND.

Payment for unused leave days is 2,696,400VND/26 of normal working days in a month x 23.33 days of unused leave = 2,419,846VND (a).

→ The factory agrees to pay the complainant an additional amount at least equal to the deposit interest rates by the State Bank of Vietnam announced at the time of payment as per Article 96 of Labor Code and Article 24.b of Decree No.05/2015/ND-CP for the late payment of annual leave from September 2017 up to now.

The deposit interest rate: 5% per years.

The time of late payment is approximately 10.5 months (from 8 September 2016 to 24 July 2017)

The compensation for the late payment is (2,419,846VND x 5% per year)/12 months x 10.5 months = 105,868VND (b)

Total amount to be paid to the complainant: **(a) + (b) = 2,525,714 VND.**



10. Verification

On 25 July, the factory's HR manager informed FWF's complaint handler that she will contact the complainant for payment. In the evening of 25 July, the complainant confirmed that she had received the payment of annual leave for 2015 and 2016 plus the interest amount, a total of 2,526,000VND.

11. Evaluation by the complainant

The complainant said that she is a lucky woman. If she had not used the FWF hotline, she would have not received the payment. Although the process of resolving complaint was long, the result is better than her expectation. She is thankful to FWF and Vaude for resolving her complaint.