

## Time Savings Account (TSA)

After years of negotiations, the Time Savings Account (TSA) for employees under private law was finally implemented by the Act of 12 April 2019. The government wanted to give employees the opportunity to manage their overtime better and to be able to use it at a time they deem appropriate, so as to help improve the work-life balance.

### How to implement the Time Savings Account

Before answering this question, it is essential to note that the employer is in no way required to implement a TSA in his company. He has discretion in the matter. The TSA is therefore neither an obligation for the employer, nor an acquired right for the employee.

If the employer opts to introduce a time savings account in his company, it must be done through the collective bargaining process:

- Either through a collective agreement;
- Or through a cross-industry agreement at the national or sector level authorizing the implementation of a TSA. In such a case, an agreement will have to be reached in the company by and between the employer and the staff delegation. This agreement will then have to be notified to the Minister for Labour for approval.

### Who is eligible for a Time Savings Account in the company?

The bill clearly indicates that the TSA is intended for the employees of a company, i.e. any person bound to the company by an employment contract. Nevertheless, the employee must have **2 years'** seniority.

### How can employees feed their Time Savings Account in the company?

The TSA is a measure intended to enable employees to plan better their professional future and adapt it, as and when necessary, to their personal or family situation. In other words, it is all about



employees saving free time for their future needs. In this respect, the TSA is kept in **hours of work** and not in cash.

Upon written request, employees can book the following days on their TSA:

- Additional days of leave granted beyond the 26 days of legal leave;
- The additional days of leave generated by the application of a reference period longer than one month;
- The surplus balances at the end of the reference period under a Work Organization Plan (WOP) or a flexible time scheme;
- The compensatory rest hours provided for overtime;
- The compensatory rest granted for work on Sunday;
- The compensatory rest for an official holiday that falls on a Sunday;
- A maximum of 5 days of paid recreational leave that the employee was unable to take during the calendar year because of illness, maternity leave or parental leave.

The time balance of the TSA may not however exceed 1800 hours, or forty-five 40-hour weeks, i.e. about one year of workdays. The Act has no particular provision for part-time employment contracts.

Under no circumstances will employees be required to feed their TSA against their will.

### How can employees use their Time Savings Account?

The TSA is used in terms of hours, in the same way as it is fed in hours.

Employees must make a written request to their employer in order to use the hours saved on their TSA. As in the case of ordinary leave, employees can use those hours as they wish, unless such use conflicts with the needs of the department or the justified wishes of other employees. Save where otherwise provided by and between the two sides of industry, the leave must be fixed at least one month in advance.

The Act offers very flexible avenues of recourse to the TSA because the employee will not only be able to use the hours accumulated so as not to work at all during a certain period, but may also decide to take a few days or half days off per week. In the latter use, part-time use is involved. Furthermore, in order not to disrupt the organization of the company, the Act requires employees to work at least 10 hours a week on average.

If employees fall ill when using their accrued rights on their TSA, disability days recognized as such by medical certificate will not be considered as days of leave used under the TSA, and will therefore be recredited to the TSA.

Similarly, in the event of extraordinary leave when employees are on leave under their TSA, said leave is interrupted and the days of leave covered by the extraordinary leave will be recredited on the TSA.



### What is the status of the employee on leave under the Time Savings Account?

The leave taken by using the accrued rights on the TSA is deemed equivalent to actual working time. This time will therefore be taken into account to determine the annual holiday of employees as well as the rights and obligations arising out of their seniority.

During the period of use of their acquired rights on the TSA, the employer will be required to keep employees in their current position or in a position that corresponds to their qualifications with at least equivalent pay.

### What are the employer's obligations with respect to the Time Savings Account?

The employer must implement a system to keep an accurate and detailed TSA for employees. This means that the TSA counter must be different from the conventional leave counter. Furthermore, he must make sure that employees can consult their TSA at all times and that they can rely on a monthly statement to verify that the provisioning corresponds to their initial wishes. It should be noted that the staff delegation is henceforth empowered to supervise the implementation and proper operation of the TSA.

As regards his accounts, the employer who has put a TSA in place must enter the financial counterpart plus the employer's charges in the assets and liabilities of the balance sheet, and adapt them, as and where necessary, to the cost of living index.

### When and how is the Time Savings Account liquidated?

The TSA can be liquidated in the following case:

- Termination of the employment contract with immediate effect for one of the following reasons: discontinuance of the employer's business, retirement pension, disability pension, exhaustion of the employee's entitlements to sickness cash benefits, external re-employment;
- Termination of the employment contract at the initiative of either party or by mutual agreement;
- Death of the employee. In such a case, the compensatory allowance will be paid to the rightful claimants.

The balance of the days leave on the employee's TSA will be liquidated by payment of a compensatory allowance by the employer. This allowance corresponds to the monetary conversion of all the rights acquired by the employee, multiplied by the hourly rate in force at the time of payment.

If the employer goes bankrupt, the Employment Fund guarantees the claims from the liquidation of the TSA up to a maximum equal to double the minimum social wage, i.e. €4142.20 at this time.



### *In conclusion*

The TSA offers greater flexibility to employees, but also introduces new obligations for the employer who wishes to put it in place: separate management of counters and a new accounting provision. This accrued flexibility of the staff also represents a real challenge for the company's organizational needs. For their part, employees must in particular file a double written request with the employer (to feed and to use their TSA).

Although the TSA has been long awaited in the private sector, the implementation procedures pursuant to the Act seem to hinder its implementation. More specifically, a company will not be able to implement a TSA without a prior collective bargaining agreement or a cross-industry agreement.

As regards the provisions contained in collective bargaining agreements signed before the Act of 12 April 2019 entered into force, the text stipulates that they will continue to apply for the term of validity of said agreements.

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