

DECREE-LAW NO. 40-2008
of 29 October

**REGIME FOR LEAVES OF ABSENCE AND ABSENCES OF CIVIL
SERVANTS**

Law No. 8/2004 of 16 June on the Civil Service, which only established the existing types of leave, requires the approval of a regime that regulates and disciplines leaves of absence as well as absences for civil servants and agents of the Public Administration. The Government has been authorised to regulate such regime.

The present regime intends to clarify the limits for granting and enjoying the leaves provided in the Civil Service Law and to typify the leaves of absence, including its effects and conditions for justification.

Thus, pursuant to articles 53.2 and 54.1 of Law No. 8/2004 of 16 June, and to article 115 (p) of the Constitution of the Republic, the Government enacts the following to have the force of law:

CHAPTER I
OBJECT, SCOPE AND DEFINITIONS

Article 1
Object

The present decree-law establishes the regime for the leaves of absence and absences of civil servants, agents and other workers of Public Administration.

Article 2
Scope

1. The present decree-law shall apply to civil servants and agents of organs of the Direct Administration of the State as well as of autonomous entities and other entities integrating the Indirect Public Administration.
2. The present decree-law shall also apply to other workers of the Direct Administration of the State, public institutes and other autonomous

entities, irrespective of the juridical title of the work relation, as long as the respective contract is for a period equal to or higher than six months.

Article 3 **Definition of leaves of absence**

For the purposes of the present decree-law:

- a) **Annual leave** – shall mean the period of annual leave;
- b) **Medical leave** – shall mean absence from work for medical appointment or for illness duly certified;
- c) **Mourning leave** – shall mean absence from work for passing away of own or spouse's relative, be it ascendant (parents, grandparents), descendent (offspring, grandchildren), siblings, uncles or aunts, and nephews or nieces;
- d) **Maternity Leave** – shall mean absence from work for delivery reasons;
- e) **Paternity leave** – shall mean absence from work following birth of son or daughter;
- d) **Marriage absence** – shall mean absence for marriage reasons;
- e) **Study leave** – shall mean protracted absence from work for academic or professional training;
- f) **Leave without pay** – shall mean authorised protracted absence from work;
- g) **Special leave without pay** – shall mean protracted absence from work at the request of the civil servant for exercising political functions.

CHAPTER II VACATION

Article 4 Right to vacation

1. Civil servants and workers are entitled to 20 working days of vacation in every civil year of effective and uninterrupted service rendered to Public Administration, save the discounts expressly provided for in the present statute.
2. The right to vacation is acquired on the 1st of January of every civil year and shall refer, as a matter of rule, to the previous civil year.
3. Vacation relating to the first civil year of service shall be taken on a proportional basis.
4. The right to vacation is unrenounceable and its effective use shall not be replaced with any pecuniary compensation, save where it is expressly provided for in the present statute.

Article 5 Retribution during vacation

No forfeiture of rights or privileges shall take place during vacation and, unless otherwise provided for by law, civil servants or agents shall be paid the remuneration they would have been entitled to had they been at work.

Article 6 Scheduling of vacation

Vacation shall be scheduled taking into account the legitimate interests of the civil servants or agents, without prejudice to the normal and regular functioning of the service as established in the vacation schedule.

Article 7 Vacation schedule

1. Services shall prepare all vacation schedules for the ensuing year by 30 November and shall inform civil servants and agents thereof.

2. The vacation map shall be approved by the Director-General in charge of the service or his or her equivalent and shall be posted in a place accessed by the civil servants and agents of Public Administration.

Article 8
Taking annual leave

Save exceptional and duly authorised accrued leave, annual leave shall be taken during the civil year in which the right to vacation is acquired.

Article 9
Interruption of leave

1. Leave shall be interrupted by virtue of maternity leave or in case of hospital admission.
2. Leave may also be adjourned or interrupted for unforeseen reasons linked to the functioning of the service.

CHAPTER III
ABSENCES

SECTION I
GENERAL PROVISIONS

Article 10
Concept of absence

Leave shall refer to the entire or partial absence from work of the civil servant or agent during the normal working period to which they are obliged to attend or the unauthorised absence during normal working hours, as well as their absence in the place to which they should report for service reasons.

Article 11
Types of absence

Absences shall be either justified or unjustified.

SECTION II CERTIFIED LEAVE

Article 12 Justified absences

1. Absences resulting from the following shall be considered justified, and therefore understood as leave of absence, as long as the necessary requirements have been met:

- a) Marriage;
- b) Mourning;
- c) Maternity;
- d) Paternity;
- e) Medical consultations;
- f) Illness;
- g) Work accident;
- h) Compliance with legal obligations;
- i) Taking of a competitive examination;
- j) Taking of mandatory examinations in the framework of academic or professional training.

2. In all the situations referred to in the preceding paragraph, civil servants and agents shall submit adequate evidence or the respective documents justifying the absences in accordance with the present statute.

3. The justification referred to in the preceding paragraph shall be in writing prior to the absence or within 5 days after the absence has taken place.

Article 13 Marriage leave of absence

1. Civil servants or agents may be absent for 5 days on the occasion of their marriage.

2. Absences for marriage reasons shall be communicated in writing with a minimum of 10 days in advance and shall be justified by presenting

the respective marriage registration certificate within a period of 10 days.

Article 14 **Mourning leave**

1. Where a relative passes away, absences of civil servants or agents may be justified as follows:
 - a) Up to 5 working days in case of passing away of spouse, parents, grandparents, offspring, grandchildren or siblings;
 - b) Up to 1 day in case of passing away of uncles/aunts or nephews/nieces.
2. The same rule shall apply in case of passing away of a spouse's relative or of a person living with the civil servant or agent in common marriage for more than two years.
3. Absences for reasons of passing away of a relative shall be communicated on the same day of the passing away or, exceptionally, on the following day and they shall be certified in writing as soon as the civil servant or agent reports to work.

Article 15 **Maternity leave**

1. Female civil servants or agents are entitled to be absent from work for 65 working days for delivery purposes.
2. From the period of absences established in the preceding paragraph, 40 working days shall mandatorily be taken immediately after delivery, and the remainder may be taken either before or after delivery.
3. Absences for maternity reasons may interrupt or suspend the annual leave, depending on the interest of the civil servant or agent concerned.

4. A breastfeeding mother is further entitled to a reduction in the working hours by one hour up until the child completes one year of age.
5. Absences for maternity purposes shall be justified by a certification issued by a medical officer, a hospital or a health centre to be presented to the work place where the civil servant or agent exercises his or her functions within 3 days from the date of the absence of the civil servant or agent.

Article 16
Paternity leave

1. On the occasion of birth of their children, civil servants or agents shall be entitled to 3 working days of absence from work.
2. The absences shall be communicated on the day of birth and shall be justified by presenting a copy of the Birth Registration Certificate within a period of 10 days.

Article 17
Absence for medical consultations

1. Civil servants or agents who, during the working day, by virtue of illness, deficiency or ambulatory treatment, requires to be absent from work for medical consultations, for undergoing exams or other clinical treatment, may be absent for the period deemed necessary for such purposes.
2. The absences for medical consultations shall be certified by means of a medical certification or by a declaration issued by the hospital or health centre indicating the need for ambulatory treatment or for undergoing exams or other clinical treatments.
3. Civil servants or agents shall present the medical certificate or the declaration certifying the undertaking of the exam or of the clinical treatment on the day immediately after the day he or she was absent from work.

Article 18
Absence for medical consultations of spouse, ascendants and descendants

The provisions of the preceding article shall apply to assistance to spouse or equivalent, ascendants and minor descendants or disabled under ambulatory treatment regime.

Article 19
Absence due to illness

A civil servant or an agent may be absent from work for duly certified health reasons.

Article 20
Effects of absence due to illness

1. Absences due to illness shall neither interrupt nor suspend the period of annual leave, save in case of duly certified hospital admission.
2. Days of absence due to illness exceeding 18 consecutive or interpolated days in every civil year shall be deducted from seniority for career purposes.

Article 21
Justification

1. Absences due to illness shall be justified by presenting one of the following documents:
 - a) Medical certificate;
 - b) Hospital admittance certificate;
 - c) Declaration of illness issued by a health centre;
 - d) Medical Board certification.
2. A civil servant or an agent prevented from reporting to work for health reasons shall communicate immediately such condition, indicating his or her location and presenting the medical certificate or the declaration certifying his or her hospital admittance or illness within a period of three days.

Article 22
Medical certificate, declaration of illness, or hospital admittance certificate

1. The medical certificate or the declaration of illness for justifying the absence from work shall contain:
 - a) The name of the medical doctor;
 - b) The name of the hospital or health centre;
 - c) The name and identification of the patient;
 - d) The estimated duration of the illness;
 - e) The impossibility to report to work;
 - f) The need or not to remain at home or to be admitted in the hospital.
2. Each medical certificate or declaration of illness may only justify up to a period of 15 working days of absence.
3. At the time of resuming work after hospital admittance, the civil servant or agent shall be required to present the respective document of discharge issued by the hospital.

Article 23
Medical Board

Save in cases of hospital admittance, civil servants or agents shall be submitted to a Medical Board where:

- a) He or she has attained the annual limit of fifteen working days of absences due to illness and is not fit for resuming his or her functions;
- b) The conduct of the civil servant or agent shows a fraudulent behavior, irrespective of the number of absences due to illness;

- c) The behavior of the civil servant or agent shows a physical or psychological disturbance that compromises the normal exercise of his or her functions;

Article 24

Limit of absences by the Medical Board

1. Where the Medical Board considers that the civil servant or the agent is not in a position to resume his or her functions, it may extend the sick leave up to a maximum of one hundred and twenty working days.
2. Once the limit of one hundred and twenty working days has been attained, the Medical Board shall take a final stand as to whether the civil servant or agent:
 - a) is in a condition to resume his or her functions;
 - b) has an illness that incapacitates him or her for the Civil Service;
 - c) may be readapted to another function or working schedule.
3. The opinion of the Medical Board shall be communicated to the service of the civil servant or agent and to the civil servant or agent himself or herself.

Article 25

Return to work after submission to a Medical Board

A civil servant or agent who has been absent for health reasons as authorised by the Medical Board may only resume work after the Medical Board has declares that he or she is capable of resuming his or her functions.

Article 26

Table of the incapacities and functioning of the Medical Board

The regulation of the functioning of the Medical Board, as well as the table of incapacities, shall be proposed by the Ministry of Health.

Article 27
Leave absence for work accident

Absences and granting of leave for work accidents, as well as the consequences thereof, shall be the object of specific regulation.

Article 28
Leave for complying with of legal obligations

Absences by a civil servant or agent for complying with legal obligations or following imposition by a judicial, police or military authority, as long as they are justified by means of a respective declaration presented within a period of 2 days, shall be considered justified.

Article 29
Imprisonment

1. Absences for reasons of imprisonment of a civil servant or an agent shall be considered justified and shall not determine forfeiture of remuneration, save where the civil servant or agent is eventually sentenced.
2. Serving a penalty of imprisonment shall imply forfeiture of remuneration and the period of imprisonment shall not count for any affect, without prejudice to other legal sanctions resulting from disciplinary proceeding where this is initiated.

Article 30
Leave of absence for sitting for examinations

Civil servants or agents shall be entitled to be absent from work for the time deemed necessary for sitting for examinations in public competitions in the framework of State services and organisms or for sitting for mandatory academic or professional examinations as long as the absences are justified through presentation of declaration within two days.

**SECTION III
UNJUSTIFIED ABSENCES**

**Article 31
Unjustified absences**

1. The following shall be considered unjustified absences:
 - a) Absences for reasons not provided for in the present statute;
 - b) Absences which are not justified pursuant to the present statute, namely where the respective required evidence is not presented or where the justification presented is proved to be false;
 - c) In addition to disciplinary proceeding, unjustified absences shall always imply:
 - a) Forfeiture of remuneration corresponding to the days of absence;
 - b) Discount in seniority and for promotion and retirement purposes.

**CHAPTER IV
LEAVES**

**SECTION I
GENERAL PROVISIONS**

**Article 32
Concept of leave of absence**

Leave shall mean authorised prolonged absence from work.

**Article 33
Types of leave of absence**

The following leaves may be granted:

- a) Leave without pay;
- b) Study leave;
- c) Special leave without pay for exercising political functions.

Article 34
General requirements for granting leave of absence

Leaves of absence provided for in the preceding article may only be granted to definitively-appointed permanent civil servants as long as:

- a) The civil servant is working and no disciplinary proceeding has been instituted against him or her;
- b) There is no inconvenience for the service.

Article 35
Interruption and cessation

Leave without pay may be interrupted or made to cease at any time:

- a) Based on convenience of service, except the special leave without pay;
- b) At the request of the civil servant.

Article 36
General effects of leave of absence

Leaves without pay shall always imply forfeiture of remuneration and discount in seniority for purposes of career, retirement and survival.

SECTION II LEAVE WITHOUT PAY

Article 37 Regime

Where circumstances of a public interest so justify, civil servants with at least three years of service may be granted leave without pay for a maximum period of two years, renewable up to one year.

Article 38 Leave without pay for study purposes

Civil servants with at least three years of service rendered may request leave without pay for a period of up to three years to attend academic or professional training courses at their own expenses.

Article 39 Effects of leave without pay for study purposes

1. Leave without pay for study purposes shall imply full forfeiture of remuneration and discount in seniority for purposes of career, retirement and survival pension.
2. Return to service shall take place at any time at the request of the civil servant and on instruction from the Government member in charge of the civil servant concerned.

SECTION III PAID LEAVE OF ABSENCE FOR STUDY PURPOSES

Article 40 Scholarship

1. Granting of paid leave of absence for study purposes shall be regulated by the regime for granting of scholarships.
2. Granting of scholarship shall only take place where the training course has a direct relation with the object of the service.

SECTION IV
SPECIAL LEAVE WITHOUT PAY

Article 41
Regime

1. A civil servant who has been elected or appointed to a political office within organs of sovereignty of the country shall request a special leave without pay.
2. Such special leaves without pay shall have the duration of the term of office for which the civil servant has been elected or the duration of the political office for which he or she has been appointed and shall not imply any reduction in seniority for purposes of career, retirement and survival pension.
3. Such special leaves without pay shall be requested at the moment in which the civil servant is a candidate for elections to organs of sovereignty of the country to enable them to fully participate in the respective electoral campaign.

Article 42
Request

1. A civil servant wishing to take special leave without pay shall submit a request to the Director-General in charge of his or her service.
2. The request shall indicate whether the duration of the special leave without pay is:
 - a) For a short duration as a candidate to elections:
 - b) For the period of duration of the political office, in case the civil servant has been elected or appointed.
3. Special leaves without pay shall be granted by instruction issued by the Government member in charge of the civil servant concerned within a maximum period of 5 days and under no circumstance shall it be denied.

Article 43
Effects of special leave without pay

1. Civil servants enjoying special leaves without pay to enable them exercise political functions shall not participate in competitions for the civil service while they are under such leave.
2. Once returning to service, the civil servant shall be integrated in the category and career that he or she used to occupy prior to taking the special leave without pay.

CHAPTER V
FINAL PROVISIONS

Article 44
Computerized attendance management

1. At the end of every month each service shall prepare a computerized list containing the indication of absences and leaves of absence of each civil servant or agent to be submitted for approval by the highest person in charge.
2. The general administrative procedures for preparing the computerized list referred to in the preceding paragraph shall be established by a statute issued by the person in charge of Public Administration.

Article 45
Entry into force

The present decree-law shall enter into force on the day after the date of its publication.

Article 46
Revocations

All legal provisions or other instructions issued during the period of UNTAET that are contrary to the present statute are hereby revoked.

Approval by the Council of Ministers on 6 August 2008.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of State Administration and Territorial Planning

Arcângelo Leite

Promulgated on 17 October 2008

For publication

The President of the Republic

José Ramos-Horta