

## ADVICE

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### 1 YOUR QUESTION

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We would like to return to your question of the 7th of December regarding a discussion that has arisen with the CCFFMG regarding the employment GPs in formation on a public holiday.

Barring contrary notice, the current situation is that when a GP in formation works during a public holiday, the immediately contiguous compulsory rest of 12 hours provided in the 2010 Act for work periods of 12 to 24 hours is also used as "recuperation" for "lost" public holiday, meaning that the public holiday worked cannot be taken on another day as a replacement.

You have already contacted the coordinator, Mr Lambert, for this, who referred to the 2010 Act, as well as the fact that the status of GPs in formation is a *"sui generis status"* that is further elaborated in the CCFFMG's vademecum. However, this is a response that adds little or nothing to this discussion and therefore offers no answer.

You requested us to analyse this position and this conduct of the CCFFMG whether or not it is in line with the regulations on this matter. We are therefore pleased to provide you with our views on this legal issue below.

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1. Doctors (in formation) are excluded from most of the provisions of the Labour Act of 16 March 1971. The law of 12 December 2010 accommodated this and sets working time limits for doctors (in formation), among other things. These are then further concretised in the internal regulations or vademecum of "CCFFMG in Wallonia" and "SUI vzw" in Flanders respectively, which act as employers of the GP in formation. This is therefore highly regionalised.

2. While CCFFMG refers in this discussion to Article 12.1 of the vademecum and Article 5, paragraph 3 of the 2010 Act which requires that *"any work activity whose duration is between 12 hours and 24 hours must be followed by a period of minimum rest of 12 consecutive hours"*, this actually has little to nothing to do with the issue of holiday compensation.

3. Regarding the rules on working on a public holiday and the catch-up rest associated with it, we should look at the law of 4 January 1974 on public holidays ("Public Holidays Act"). Doctors (in formation)

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- unlike the Labour Act - are not excluded from this scope so that this legislation and the central principles put forward in it also apply to GPs in training.

4. If working on a public holiday, catch-up rest should be taken on another day. This central principle also applies here. Section 5(3) of the 2010 Act does not affect this because, as mentioned, it has a different object. The sole purpose of this provision is to prevent uninterrupted work for too long and then provide a minimum rest break of 12 hours. CCFMG is trying to make this a kind of double use and then also suddenly consider it as catch-up rest, but we do not think that is correct. It is an "and-and" story in the sense that if between 12 and 24 hours have been worked, 12 hours of rest must be offered immediately after and, in addition, a half-day or a full day of catch-up rest must be offered within the six weeks.

### **3 EXTENSIVE ANALYSIS**

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#### **3.1 LEGAL FRAMEWORK**

5. In our country, the law of 16 March 1971 excluded doctors, dentists, veterinarians and student trainees preparing to practice these professions from the scope of the provisions on working hours and rest periods.

The European Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time no longer allowed their exclusion and therefore the provisions on working and rest times had to be adopted in our country.

The law of 12 December 2010 came into force on 1 February 2011 and sets the limits applicable in terms of working hours for this category of persons.

6. The 2010 Act writes in Article 5(3) that "any work activity whose duration is between 12 hours and 24 hours must be followed by a period of minimum rest of 12 consecutive hours" this actually has little to nothing to do with the issue of employment on a public holiday. Indeed, the 2010 Act does not stipulate a thing on this issue.

The vademecum also does not contain any separate provisions on (employment on) public holidays, which is the case, for example, with the Flemish counterpart Sui vzw, as with specialists in formation. The vademecum states only in point 16: "*Les jours fériés qui coïncident avec un dimanche ou un jour habituel d'inactivité dans le cabinet doivent être remplacés par un jour habituel d'activité. Ce jour de remplacement doit se situer dans la même année civile et être considéré comme jour férié*".

7. We should therefore look at the Act of 4 January 1974 on public holidays ("Public Holidays Act"). Doctors / GPs (in formation) are not excluded from this scope so that this legislation and the central principles put forward in it also apply to GPs in formation.

#### **3.2 EMPLOYMENT ON A PUBLIC HOLIDAY**

8. All employees, including GPs in formation, are entitled to 10 statutory public holidays. To guarantee the employee 10 public holidays, the law stipulates that if a public holiday coincides with a Sunday or an ordinary inactivity day in the company (i.e. the GP in formation does not work on that day), he must be replaced on another day. This "replacement day" must be set on an ordinary activity day in the enterprise. This replacement day then acquires the status of a public holiday.

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This is also confirmed in paragraph 16 "les jours fériés" of the vademecum (see marginal 6).

9. If the GP in formation was employed during a public holiday, he is entitled to catch-up rest in accordance with Article 11 of the Public Holidays Act. The catch-up rest must be a full day if the work has lasted more than four hours. If the performance did not exceed four hours, one enjoys half a day of catch-up rest.

This rest is granted within six weeks following the public holiday. So *de facto*, this will amount to taking the public holiday at another time but legally we cannot speak of a substitute public holiday but only of catch-up rest. On the day catch-up rest is taken, the GP in formation is entitled to remuneration.

However, it is not the case that if this holiday fell on a regular inactivity day (a Sunday) this would then be compensated a second time.

10. Such catch-up rest is not the same as the compulsory 12-hour rest break. Both must be guaranteed. Very concretely, if the GP worked on Monday 1 January last and thereby worked between 12 and 24 hours, he must be given 12 hours of compulsory rest on Tuesday 2 January. A full day of catch-up rest must then also be provided within the six weeks.

### **3.3 CONFIRMED BY OTHER SCHEMES FOR HAIOS IN FLANDERS AND ASOS**

11. If we then look further into what is stipulated in Flanders for "Haio's" (in the internal regulations of Sui vzw, the counterpart of CCFFMG) or at national level for doctors-specialists in formation, we see that these principles from the Holidays Act are indeed applied. You can certainly also cite this in defence of your viewpoint.

12. The collective bargaining agreement of 19 May 2021 explicitly stipulated for doctors-specialists in formation in Flanders that:

*"The general principle is that junior doctors should be able to take 10 statutory public holidays annually. If a public holiday happens to fall during a weekend, this day must be able to be taken at another time by mutual agreement. **If the trainee doctor-specialist has to perform work duties during a public holiday, it must be possible to take that day at another time by mutual agreement.** If a junior doctor specialist is on duty during a public holiday that falls on a Sunday, this situation does not entitle him/her to double recovery. Only the holiday in question must be able to be taken at another time. Of course, the regulation on rest periods remains fully applicable."*

13. We read the same thing in the internal regulations of SUI vzw (the Flemish counterpart of CCFFMG):

**HUISHOUDELIJK REGLEMENT VAN SUI** vzw (VERSIE 01/03/2023)

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**V.4. FEESTDAGEN**

Er zijn 10 wettelijke feestdagen, namelijk 1 januari, Paasmaandag, O.L.Heer Hemelvaart, 1 mei, Pinkstermaandag, 21 juli nationale feestdag, 15 augustus O.L.Vrouw Hemelvaart, Allerheiligen, 11 november en Kerstdag.

Voor deze wettelijke feestdagen geldt de zondagdiestregeling.

Indien een van deze wettelijke feestdagen op een zaterdag of zondag valt, wordt deze niet gecompenseerd met een verlofdag op een ander moment. Een uitzondering hierop: stages op spoeddiensten: aangezien haio's hier ingeschakeld worden via variabele shiften en ook op zaterdagen/zondagen of op wettelijke feestdagen kunnen ingeroosterd worden, kunnen ze deze momenten op feestdagen compenseren op andere dagen.

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