

EXAMPLE CASES

Holiday purchase and insurance cover

AREA OF LAW Employment contract law, Accident insurance, Occupational pensions	CANTON Aargau	NORMS CITED 12
DECISIONS CITED 5	COMPUTED ON 11.09.2026	AI MODEL global, after anonymisation

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INPUT

Facts

This is everything that was entered — anonymised, with the questions of the request.

We are an industrial company in Aarau with around 340 employees. At our company, employees can currently buy up to ten additional days of holiday per year, for full-time employment; individually or in a block. The purchase price is deducted from the salary in the month of the order, or in the following month if the order is placed after the 20th. The purchased days are taken within one year, in one block or individually, without approval by HR or line managers. Anyone who needs more can apply for unpaid leave; this requires the approval of the line manager and of HR, and we hand out an information sheet on accident insurance and the pension fund. We are considering extending the holiday purchase to fifteen or twenty days, so that someone with purchased days can be away for up to a month. An employee with a monthly salary of 8'000 francs wants to buy twenty days at once and take them in one block in February. We are unclear whether, for insurance purposes, the purchased days count like unpaid leave.

QUESTIONS

1. Do the purchased holiday days, which we deduct from the salary, count as unpaid days for accident insurance and the pension fund — in other words, does an extended cover period run, or not?
2. Do accident insurance and the pension fund treat these days differently, and do we only have to report regular unpaid leave to the insurers or also the holiday purchase?
3. What else do we need to consider if we extend to twenty days — regarding insurance cover, the pension fund or the regulations?

CLARIFICATION

Follow-up questions from the pre-analysis

Before the analysis runs, LEXchat asks about what the facts leave out. Only what the text already stated was answered.

- 1 **Should the extension of the holiday purchase to fifteen or twenty days be examined specifically?**

left open

- 2 **Is the approval of line managers and HR required for the purchase of twenty holiday days?**

left open

RESULT

First analysis

The result, unedited. Every cited norm and decision is linked and can be checked.

Summary of the situation

The "holiday purchase" is an agreement on additional holidays beyond the statutory minimum in exchange for a waiver of salary; under Art. 19 para. 1 OR it is permissible as long as the statutory minimum holiday entitlement of four weeks (Art. 329a para. 1 OR) remains untouched and the full holiday pay under Art. 329d para. 1 OR is paid for it (mandatory under Art. 362 para. 1 OR) — the extension to 15 or 20 days is therefore possible in principle, but as the quota grows it comes closer to a disguised shifting of the holiday pay risk onto the employee, which the Federal Supreme Court rejected in BGE 118 II 136. For insurance law purposes, what matters is not the label but the actual salary entitlement (Art. 18 para. 1 OR): under Art. 3 para. 2 UVG, accident insurance ends only on the 31st day after the entitlement to at least half the salary ceases, whereas the occupational pension relationship under Art. 10 para. 2 BVG continues without interruption as long as the employment relationship continues and the annual salary exceeds CHF 22'680 (Art. 2 para. 1, Art. 7 para. 1 BVG) — the two branches are thus treated differently. Prognosis: under the current design (deduction in the month of the order or the following month, unreduced salary payment in the month the days are taken) no extended cover period runs; action is needed above all regarding the staggering of deductions, the coordinated salary and the approval requirement for large withdrawals.

Analysis

Legal assessment

1. Legal nature of the holiday purchase and permissibility of the extension (work assignment 1)

The holiday purchase is not a holiday arrangement in the technical sense, but a two-part agreement: a waiver of part of the salary entitlement (Art. 322 para. 1 OR) in exchange for release from the obligation to work (Art. 319 para. 1 OR) for a certain number of days; whether in the individual case there is a reduction of the agreed salary or a set-off against a purchase price claim is not decided by the label alone, but must be qualified on the basis of the agreement, the payslip under Art. 323b para. 1 OR and the time of payment. Under Art. 18 para. 1 OR, what matters is the true and common intention of the parties, not the designation as "holidays". Economically, it is a selective, consensual suspension of the principal obligations — i.e. the same structure as unpaid leave, the only difference being that the salary deduction is brought forward in time.

The agreement is permissible under Art. 19 para. 1 OR insofar as it does not conflict with mandatory law. Limits:

- **Art. 329a para. 1 OR** (mandatory in favour of employees, Art. 362 para. 1 OR): at least four or five weeks of paid holidays per year of service. The purchased days must be additional and may neither replace nor reduce the ordinary entitlement.
- **Art. 329d para. 1 OR** (mandatory, Art. 362 para. 1 OR): for the statutory holidays, the entire salary attributable to them is owed. According to BGE 118 II 136, agreements that deter the employee from receiving the full holiday pay that is mandatorily owed, or that burden him with the risk of salary losses, violate Art. 329d OR. The larger the purchase quota, the greater the risk that a court will qualify the overall system as a circumvention — in particular if the purchase price per day is higher than the salary attributable to one holiday day or if the purchased days are taken before the ordinary ones. This is a question of judgement; a quantified permissible maximum quota cannot be derived from Art. 329a para. 1 OR.

The standard of Art. 329d para. 1 OR is strictly amount-based: what is owed is "the entire salary attributable to them" — i.e. for each of the four or five statutory holiday weeks, the salary the employee would have received had he worked. In concrete terms, this means for the pricing and payroll mechanics: the purchase price per purchased day may not exceed the share of salary attributable to one working day, the deduction must be allocated exclusively to the purchased days and shown as such on the payslip (Art. 323b para. 1 OR), and in the months in which ordinary holidays are taken no purchase price deduction may reduce the holiday pay — otherwise the employee bears a loss on the mandatory holiday pay contrary to Art. 329d para. 1 OR.

- **Art. 329d para. 2 OR** (mandatory for both parties, Art. 361 para. 1 OR): holidays may not be replaced by cash payments during the employment relationship. The holiday purchase is the mirror image of this and is therefore not directly covered; however, an unwinding clause that pays out untaken *ordinary* days would be covered. On the strictness of the prohibition of compensation and its narrow exceptions, see BGer 4A_31/2021 and BGer 4A_341/2012.
- **Art. 341 para. 1 OR**: during the employment relationship, no waiver of mandatory claims is possible. A clause that in effect excludes holiday pay for the statutory minimum holidays is void under Art. 362 para. 2 OR, with the consequence of partial nullity under Art. 20 para. 2 OR.

Interim result: The extension to 15 or 20 days is permissible if the regulations lay down (i) the subordination of the purchased holidays to the ordinary holidays, (ii) the equivalence in amount between the purchase price and the salary forgone, and (iii) that the entitlement under Art. 329a para. 1 OR remains unaffected.

2. The salary deduction — reduction of gross salary or set-off? (the doctrinal pivot)

The entire insurance law assessment depends on how the deduction is structured:

Variant A — reduction of gross salary: The agreed salary (Art. 322 para. 1 OR) is reduced for the month concerned. Consequence: the relevant salary under Art. 5 para. 2 AHVG decreases, and with it the annual salary under Art. 7 para. 2 BVG and the insured earnings under Art. 22 para. 2 UVV.

For occupational pensions, however, this consequence is not inevitable: under Art. 3 para. 1 let. b BVV 2, the pension fund may determine the coordinated annual salary in advance on the basis of the last known annual salary, and under Art. 3 para. 1 let. a BVV 2 it may disregard salary components that arise only occasionally. Whether the purchase price deduction reduces the coordinated salary at all therefore depends primarily on the regulations of the pension fund; if the fund relies under Art. 3 para. 2 BVV 2 on the salary paid for a given payment period, the deduction has an immediate effect, but the employee remains subject to mandatory insurance even if his salary temporarily falls below the minimum amount.

Variant B — set-off of a purchase price claim against the unreduced salary: The gross salary remains unchanged; the AHV, BVG and UVG bases remain in full. In return, Art. 323b para. 2 OR applies: set-off only to the extent that the salary claim is attachable (Art. 93 para. 1 SchKG); under Art. 361 para. 1 OR the provision is mandatory for both parties, and the employee's consent does not cure an excess. Whether a direct charge agreed in advance is "set-off"

within the meaning of Art. 120 para. 1 OR and Art. 323b para. 2 OR at all, or is regarded as a mere modality of salary determination, is an open question of judgement — I expressly flag it as such and advise a conservative treatment.

Concrete calculation for the case at hand (monthly salary CHF 8'000, 20 days):

Item	Amount
Annual salary (12 × 8'000)	CHF 96'000
Daily rate 96'000 ÷ 260 working days	CHF 369.25
Purchase price 20 days	CHF 7'385 (alternative rate 8'000 ÷ 21.75 × 20 = CHF 7'356)
Annual salary after deduction	CHF 88'615
Coordinated salary so far (capped at 90'720 – 26'460, Art. 8 para. 1 BVG)	CHF 64'260
Coordinated salary after deduction (88'615 – 26'460), provided the regulations rely on the effective salary (Art. 3 BVV 2)	CHF 62'155
Reduction of the insured salary	CHF 2'105 (approx. 3.3%)

The purchase price practically corresponds to a full monthly salary. A deduction in a single month means that in that month the entitlement to at least half the salary (CHF 4'000) is no longer met — with the consequences set out under no. 3. If the deduction is staggered over three months (approx. CHF 2'462 each), CHF 5'538 remains each month, i.e. clearly more than half.

3. Question 1: Accident insurance — do extended cover periods run?

Under Art. 1a para. 1 let. a UVG in conjunction with Art. 1 UVV, mandatory accident insurance requires that insured employee status exists at the time of the accident. Under Art. 3 para. 2 UVG it ends **on the 31st day after the day on which the entitlement to at least half the salary ceases**. Under Art. 7 para. 1 let. a UVV, salary means the salary relevant for AHV purposes.

Under Art. 1 UVV, an employee within the meaning of Art. 1a para. 1 let. a UVG is anyone who carries on a dependent gainful activity within the meaning of the AHV legislation; the link is thus to the qualification under AHV law and not to the amount of salary paid in an individual month. Since in the case of the holiday purchase the employment relationship continues without interruption and the activity remains dependent under AHV law, insured status is preserved; the only decisive factor is the salary entitlement under Art. 3 para. 2 UVG in conjunction with Art. 7 para. 1 let. a UVV.

BGer 8C_587/2024 holds that during unpaid leave the essential obligations under the employment relationship are suspended and that there is no cover if a continuing salary entitlement is not proven; BGer 8C_413/2019 confirms the same link to Art. 3 para. 2 UVG for unpaid leave. Accordingly, what matters is **not the label "holidays" or "unpaid leave", but the salary entitlement in the period in question**.

For your model, this means:

- *Current design (deduction in the month of the order or the following month, unreduced salary payment in the month the days are taken):* In February the ordinary monthly salary is paid; the entitlement to at least half the salary within the meaning of Art. 3 para. 2 UVG in conjunction with Art. 7 para. 1 let. a UVV does not cease in that month, and employee status under Art. 1a para. 1 let. a UVG in conjunction with Art. 1 UVV remains unchanged. Therefore **no period under Art. 3 para. 2 UVG runs**, and for accident insurance purposes the purchased days are **not** to be treated like unpaid leave — what matters, however, is not the label but the actual design of the agreement, the payslip and the time of payment, which must therefore be documented.
- *Danger point — the month of the order:* If the full purchase price of CHF 7'385 is deducted in a single month (Variant A), the salary entitlement in that month falls below half — and in a month in which the employee is working. Whether this triggers the period under Art. 3 para. 2 UVG is doubtful (employee status under Art. 1a para. 1 let. a UVG remains unchanged), but cannot be ruled out. I flag this as an open question of judgement and recommend preventing it from arising in the first place by staggering the deduction.
- *Variant with salary reduction in the month the days are taken:* If there is no salary for February, the entitlement ends on 31 January; under Art. 3 para. 2 UVG cover continues for another **31 days**, i.e. until 3 March. Twenty consecutive working days correspond to 28 calendar days and would thus fall just within the period. The margin is three days — it is lost as soon as the withdrawal is combined with further holidays, bridge days or unpaid leave.
- *Safety net:* Under Art. 3 para. 3 UVG and Art. 8 UVV, the insurance can be extended by agreement for up to **six months**; the agreement must be concluded **before** the insurance ends. According to the wording of Art. 8 UVV, it covers exclusively **non-occupational accident insurance** — it provides no cover for occupational accidents (for instance on the way to work on the first day after returning, where there is no salary entitlement), which is why it is not a complete but only a partial safety net.
- *Amount of benefits:* Under Art. 15 para. 2 UVG and Art. 22 para. 3 UVV, the daily allowance is calculated on the basis of the **last salary received before the accident**. An accident immediately after a month with a full purchase price deduction can therefore lead to a markedly lower daily allowance. The corrective provision of Art. 23 para. 1 UVV covers only military, civilian and civil protection service, accident, illness, maternity and short-time work — the holiday purchase does not fall under it; Art. 23 para. 3 UVV (appropriate average salary in the case of strong salary fluctuations) could be invoked, but is not a reliable lifeline. This too speaks in favour of staggering. Art. 13 para. 1 UVV (NBU cover from eight hours per week) is linked to the agreed working time, not to the working time actually performed during the absence, and is unproblematic for full-time employees.

4. Question 2, first part: Do the UVG and the BVG treat the days differently?

Yes, and structurally so. The BVG is not linked to the salary entitlement in an individual month, but to the existence of the employment relationship and to annual salary thresholds:

- Beginning and end of mandatory insurance: Art. 10 para. 1 and para. 2 BVG. Under Art. 10 para. 2 let. b BVG, the pension relationship ends upon termination of the employment relationship and, under let. c, when the salary falls below the minimum salary.
- Minimum salary: CHF 22'680 annual salary (Art. 2 para. 1 and Art. 7 para. 1 BVG). At CHF 88'615 after deduction of 20 purchased days, this threshold is by no means affected.

Coverage here follows exclusively from Art. 2 para. 1 BVG (employee status); the subjection of self-employed persons under Art. 3 BVG requires an application by the professional association and plays no role for your employees. The relevant figure therefore remains the annual salary under Art. 7 para. 2 BVG, and in the case of employment for less than a year the salary converted to a full year (Art. 2 para. 2 BVG) — relevant for employees joining in the year of the holiday purchase.

Consequence: occupational pension cover continues without interruption; there is no gap in cover and no extended cover situation. The one-month continued cover for death and disability under Art. 10 para. 3 BVG presupposes the termination of the pension relationship and is not relevant here.

What may be affected, however, is the **amount of benefits**: if the annual salary relevant for pension purposes decreases, the coordinated salary under Art. 8 para. 1 BVG decreases — in the case at hand by approx. CHF 2'105; whether this happens is determined by Art. 3 BVV 2 and the pension fund regulations, which is why the figure must be verified with the pension fund before any communication to employees. The protective provision of Art. 8 para. 3 BVG does not apply: it covers only temporary salary reductions due to illness, accident, unemployment, parenthood, adoption "or for similar reasons" and links the duration to the obligation to continue paying salary under Art. 324a OR. The holiday purchase is not a hindrance through no fault of the employee, but a voluntary suspension; there is precisely no entitlement to continued salary payment under Art. 324a para. 1 OR for it. Whether "similar reasons" should be understood more broadly is an open question of interpretation — in light of the meaning and purpose of the provision, it is to be answered in the negative.

There is scope for design in the pension fund regulations: under Art. 49 para. 1 BVG, pension funds are free to design their benefits and their financing and, under Art. 50 para. 1 let. a and c BVG, issue provisions on benefits as well as on administration and financing. A regulatory clause under which the previous coordinated salary is maintained in the event of a holiday purchase and unpaid leave is readily possible; parity of contributions under Art. 331 para. 3 OR and Art. 66 para. 1 BVG must be observed (the exception in Art. 33a para. 3 BVG concerns only continued insurance after the age of 58 and does not fit here).

The freedom of design is not unlimited: under Art. 1 para. 1 and 2 BVV 2, the pension plan must remain appropriate, i.e. the regulatory benefits may not exceed 70% of the last insurable salary subject to AHV contributions before retirement, or the retirement credits may not exceed 25% of the insurable salaries subject to AHV contributions (Art. 1 para. 2 let. a and b BVV 2). A clause that maintains the previous coordinated salary despite a holiday purchase must be measured against this limit — at the order of magnitude in question here of approx. 3% of the annual salary, it is unproblematic.

5. Question 2, second part: Reporting obligations

Neither the UVG nor the BVG provides for a reporting obligation for the "holiday purchase" as such. What must be reported are the **salary bases**:

- To the UVG insurer: correct declaration of the insured earnings under Art. 22 para. 2 UVV. As long as no month without salary entitlement arises, nothing needs to be reported about individual withdrawals. If, on the other hand, a withdrawal with a salary reduction is to take place, or if the extension under Art. 3 para. 3 UVG in conjunction with Art. 8 UVV is desired, the agreement must be concluded **before** the start of the unpaid period — this is the operationally critical point.
- To the pension fund: reporting of every change in the relevant annual salary, so that the coordinated salary under Art. 8 para. 1 BVG is kept correctly. The details are set out in the regulations and the affiliation agreement (Art. 50 para. 1 let. e BVG).
- In the case of **genuine unpaid leave**, it must additionally be reported or clarified whether the pension relationship is suspended or continued against payment of the total contributions, and whether extended cover by agreement under Art. 3 para. 3 UVG is needed. Here your information sheet is already the right approach.

In passing, but of practical relevance: according to BGE 137 V 121, there is no legal basis for **family allowances** during unpaid leave that is not specifically justified. As long as salary is paid in the month the days are taken, this problem does not arise with the holiday purchase; it very much does, however, in a model with a salary reduction in the month the days are taken. The contribution period in unemployment insurance (Art. 13 para. 1 AVIG) remains unaffected, as the employment relationship subject to contributions continues.

6. Question 3 and work assignment 3: Approval requirement and further points at 20 days

Approval: Under Art. 329c para. 2 OR, the employer determines the timing of the holidays and takes the employee's wishes into account insofar as this is compatible with the interests of the business. Under Art. 362 para. 1 OR, the provision is mandatory in favour of the employee; a voluntary waiver by the employer of its right to determine the timing (withdrawal without approval) is permissible as a more favourable arrangement, but is **not required** by law.

Introducing an approval requirement for large withdrawals is readily permissible and is based on Art. 321d para. 1 OR; it is strongly recommended for a withdrawal of 20 consecutive days, as the interests of the business are considerably affected. Note: for commitments already in force, the subsequent introduction of an approval requirement is an amendment of the contract that requires consent or would have to be enforced by means of a notice of termination with an offer of modified terms under Art. 335 para. 1 OR; the introduction of the extended quota itself is a more favourable arrangement and can be tacitly accepted under Art. 6 OR (freedom of form: Art. 320 para. 1 OR, Art. 11 para. 1 OR). Public-sector staff law (for instance Art. 41 para. 2 PVBger with the express reservation of undisturbed operations, or Art. 36 para. 1 PersR of the Aargauische Gebäudeversicherung with the requirement of approval by the executive board from four weeks) does not apply to your private-law employment relationship, but illustrates widespread regulatory practice.

Reduction of holidays: Art. 329b para. 1 OR permits a reduction of one twelfth per full month only in the case of a hindrance **through the employee's fault**; para. 2 prohibits a reduction in the case of a hindrance through no fault of the employee of up to one month. The holiday purchase and unpaid leave are not a "hindrance" within the meaning of this provision, but a consensual suspension. According to BGer 4A_319/2019, the reduction in the case of incapacity to work through no fault of the employee is governed by Art. 329b OR and not by a mere pro rata calculation based on Art. 329a para. 3 OR; whether, conversely, a pro rata reduction of the ordinary holiday entitlement under Art. 329a para. 3 OR is permissible in the case of a consensual suspension is an open question of judgement. The public-law rules (Art. 67a para. 1 let. b BPV: 22 working days; Art. 41 para. 4 let. b PVBger and Art. 29 para. 1 let. b AZGV: 30 days of unpaid leave each; Art. 36 para. 1bis PersR AGV: proportionate reduction) show that this question is regularly governed by positive law — you should answer it expressly in the regulations. For the **purchased** days, the following applies mandatorily: they do not give rise to their own holiday entitlement ("no holidays on holidays") and may not reduce the ordinary entitlement under Art. 329a para. 1 OR.

Further points to regulate:

- Order of withdrawal and compliance with Art. 329c para. 1 OR (at least two consecutive weeks of holidays from the ordinary entitlement).
- Illness/accident during purchased days: regulate whether the day is refunded and granted again later. If there is no salary entitlement for these days, continued salary payment under Art. 324a para. 1 OR also lapses; under Art. 362 para. 1 OR the provision is mandatory only insofar as a salary entitlement exists at all.
- Purchased days not taken at the end of the year: refund of the purchase price under Art. 62 para. 2 OR (lapsed legal ground), **not** payment as holiday compensation — otherwise there is a risk that the structure comes close to Art. 329d para. 2 OR.
- Departure with days already taken but not yet fully paid: reclaim under Art. 62 OR, set-off only within the limits of Art. 323b para. 2 OR in conjunction with Art. 93 para. 1 SchKG.
- Written information about the change in salary under Art. 330b para. 1 let. d and para. 2 OR within one month.
- Written payslip with separate disclosure of the purchase price deduction (Art. 323b para. 1 OR); no agreement on the use of the salary in the employer's interest (Art. 323b para. 3 OR — unproblematic here, as it is in the employee's interest).
- Duty of care under Art. 328 para. 1 OR: the information sheet must be extended to the holiday purchase, in particular to the reduction of the coordinated salary and the calculation of the daily allowance under Art. 22 para. 3 UVV.
- Daily sickness benefits insurance: the general terms and conditions must be checked for suspension clauses in the event of longer absences; on the limit set by the unusualness rule for clauses restricting benefits during holiday absences, see BGer 4A_592/2015.
- Equal treatment: pro rata quota for part-time employees; prohibition of an arbitrary approval practice (Art. 328 para. 1 OR).

Limitation: claims arising from the employment relationship become time-barred under Art. 128 no. 3 OR after five years, to which Art. 341 para. 2 OR refers; records of purchase prices and holiday pay must accordingly be kept for at least five years. The determination of salary for pension purposes is governed by Art. 3 BVV 2 in conjunction with the regulations of the pension fund.

Prospects of success

This is advice on structuring; the risk does not materialise in pending proceedings but in two scenarios.

Scenario A – employee action for holiday pay. An employee claims that the purchase agreement is void under Art. 362 para. 2 OR and that holiday pay must be paid retroactively under Art. 329d para. 1 OR. Key argument for the employee: BGE 118 II 136, according to which agreements that burden the employee with the risk of salary losses in connection with holidays violate Art. 329d OR. Key argument for the employer: the purchased days lie outside the mandatory minimum of Art. 329a para. 1 OR; in the area beyond the statutory minimum, Art. 19 para. 1 OR applies, and the agreement is made at the request and in the interest of the employee. With proper documentation, I consider the employer's argument to be clearly stronger; the risk does, however, increase measurably if the order of withdrawal is not regulated or the purchase price exceeds the salary forgone. **Burden of proof:** the employer must prove that the holidays owed were actually granted and paid (as held in cantonal practice in Higher Court C-24719-2013 and Higher Court C-22737-2015); an estimate under Art. 42 para. 2 OR comes into consideration only where proof is objectively impossible. Practical consequence: separate time balances for ordinary and purchased days, kept for the entire limitation period.

Scenario B – insured event during a large withdrawal. This is where the actual liability risk lies: if the UVG insurer denies cover on the basis of Art. 3 para. 2 UVG and the line of BGer 8C_587/2024 and BGer 8C_413/2019, the employee will hold the employer liable for breach of the duty to inform (Art. 328 para. 1 OR). In the case of 20 consecutive days with continued salary, cover exists according to the view taken here; the residual risk lies in the question of qualification and in the calculation of the daily allowance under Art. 22 para. 3 UVV. For non-occupational accidents, this risk can largely be absorbed by extended cover by agreement under Art. 3 para. 3 UVG in conjunction with Art. 8 UVV – weighing cost against risk, this is clearly the preferable solution; for occupational accidents it remains ineffective, which is why it must additionally be ensured that a salary entitlement of at least half continues in the month the days are taken.

Costs. Employment law disputes with an amount in dispute of up to CHF 30'000 are privileged before the Federal Supreme Court with a court fee of CHF 200–1'000 (Art. 65 para. 4 let. c BGG); the allocation of costs follows Art. 66 para. 1 and Art. 68 para. 1 and 2 BGG. With 340 employees, however, the actual cost risk lies not in the individual case but in the multiplier effect of a void standard clause.

Recommended next steps

1. **Take a fundamental decision on the structure of the deduction** (Variant A reduction of gross salary or Variant B set-off) and record it in writing. Recommendation: Variant A with staggered deduction, as Variant B may fail because of the mandatory limit of Art. 323b para. 2 OR in conjunction with Art. 93 para. 1 SchKG.
2. **Anchor the staggering of deductions in the regulations:** monthly deduction of at most 40% of the gross monthly salary, but in any event calculated so that more than half the salary remains in each month (threshold of Art. 3 para. 2 UVG). In the case at hand: CHF 7'385 spread over three months at CHF 2'461.65 each, remaining salary CHF 5'538.35 each. The result of this step is a calculation table for 5/10/15/20 days at the usual salary levels.
3. **Redraft the "holiday purchase" regulations** with at least the following clauses: subordination to the ordinary holidays (compliance with Art. 329a para. 1 and Art. 329c para. 1 OR); no holidays on purchased days; no reduction of the ordinary entitlement; approval requirement from a consecutive withdrawal of ten working days; refund of days not taken under Art. 62 para. 2 OR instead of payment; rules on illness/accident during

purchased days; unwinding upon departure with the set-off limit under Art. 323b para. 2 OR; pro rata quota for part-time employees.

4. **Introduce the approval requirement:** for new commitments via the amendment of the regulations; for existing entitlements, it must be examined whether consent must be obtained or a notice of termination with an offer of modified terms under Art. 335 para. 1 OR is necessary. Result: draft employee letter with declaration of consent.
 5. **Written enquiry to the UVG insurer** setting out both withdrawal variants and the concrete figures, seeking confirmation that no period under Art. 3 para. 2 UVG runs where the salary entitlement continues in the month the days are taken, and on the treatment of the daily allowance under Art. 15 para. 2 UVG and Art. 22 para. 3 UVV after a month with a purchase price deduction. Result: draft of the letter of enquiry.
 6. **Set up a process for extended cover by agreement:** for every withdrawal of more than ten consecutive working days with reduced salary, the agreement under Art. 3 para. 3 UVG in conjunction with Art. 8 UVV must be concluded **before** the start of the absence (extension of up to six months). Anchor deadline monitoring in the HR system.
 7. **Review the affiliation agreement and pension fund regulations and request an amendment:** inclusion of a clause maintaining the previous coordinated salary in the event of a holiday purchase and unpaid leave, based on Art. 49 para. 1 and Art. 50 para. 1 let. a and c BVG, while preserving parity of contributions under Art. 331 para. 3 OR. Result: letter to the pension fund with a concrete wording proposal.
- 7a. **Clarify the definition of salary for pension purposes:** before any calculation, ask the pension fund in writing whether it determines the coordinated salary in advance under Art. 3 para. 1 let. b BVV 2 on the basis of the last known annual salary or relies under Art. 3 para. 2 BVV 2 on the salary paid per payment period; this determines whether the purchase price deduction affects the insured salary at all. Result: file note with the pension fund's answer and the resulting figures, supplemented by confirmation that maintaining the previous coordinated salary complies with the appropriateness limits under Art. 1 para. 2 BVV 2.
1. **Check the general terms and conditions of the daily sickness benefits insurance for suspension clauses in the event of longer absences** and, if necessary, obtain confirmation of cover from the insurer.
 2. **Extend the information sheet:** inclusion of the holiday purchase with a reference to the reduction of the coordinated salary under Art. 8 para. 1 BVG (in the case at hand approx. CHF 2'105 or 3.3%), to the calculation of the daily allowance under Art. 22 para. 3 UVV and to the non-applicability of Art. 8 para. 3 BVG. Provide for countersignature by employees — it is the key piece of evidence against later claims under Art. 328 para. 1 OR.
 3. **Standardise the written notification of the change in salary** under Art. 330b para. 1 let. d and para. 2 OR and the separate disclosure of the deduction on the payslip under Art. 323b para. 1 OR.
 4. **Separate time balances:** separate recording of ordinary and purchased holiday days in the time recording system, with retention of the records of withdrawals — the burden of proof for the granting of holidays lies with the employer.

References

Key decisions

Decision	Ratio decidendi	Significance for the mandate
BGer 8C_587/2024	Mandatory accident insurance requires that insured employee status exists at the time of the accident; during unpaid leave the essential obligations under the employment relationship are suspended, and the insurance ends under Art. 3 para. 2 UVG on the 31st day after the entitlement to at least half the salary has ceased.	Key decision on the main question: what matters is the salary entitlement, not the label of the absence. If salary continues in the month the days are taken, no period runs; in the case of a salary reduction, the 31-day period applies.

Decision	Ratio decidendi	Significance for the mandate
BGer 8C_413/2019	Mandatory accident insurance ends on the 31st day after the day on which the entitlement to at least half the salary ceases; if there is no salary entitlement during unpaid leave, there is no cover for accidents occurring later.	Confirms the calculation of the period and shows that the gap in cover in the case of genuine unpaid leave is real — basis for extended cover by agreement under Art. 3 para. 3 UVG.
BGE 118 II 136	Agreements that, in the event of holiday absence, deter the employee from receiving the full holiday pay mandatorily owed or burden him with the risk of salary losses violate Art. 329d OR.	Central limit for the extension to 20 days: the structure may not in effect devalue the statutory minimum holiday entitlement; the order of withdrawal and the price calculation must be regulated accordingly.
BGE 137 V 121	There is no legal basis for family allowances during unpaid leave that is not specifically justified; extending the entitlement beyond the law is impermissible.	Shows a further side effect of the suspension of salary, which occurs in a model with a salary reduction in the month the days are taken, but not in the current model.
BGer 4A_319/2019	In the case of incapacity to work through no fault of the employee, the holiday entitlement is reduced under Art. 329b OR and not by a mere pro rata calculation under Art. 329a para. 3 OR.	Benchmark for the question to be answered in the regulations whether the ordinary holiday entitlement may be reduced pro rata in the case of longer absences.

Overview of key provisions

Article	Content	Doctrinal significance
Art. 3 UVG	Insurance begins with the employment relationship or the first salary entitlement (para. 1) and ends on the 31st day after the day on which the entitlement to at least half the salary ceases (para. 2); extension by agreement for up to six months (para. 3).	Central connecting provision for questions 1 and 2: decides on the extended cover period and the need for action in the case of large withdrawals.
Art. 10 BVG	Mandatory insurance begins when the employment relationship commences and ends, among other things, upon its termination or when the salary falls below the minimum salary (para. 2 let. b and c); extended cover for death and disability for one month (para. 3).	Demonstrates the BVG's different connecting factor compared with the UVG: no interruption of the pension relationship in the case of a holiday purchase.
Art. 8 BVG	The annual salary from CHF 26'460 to CHF 90'720 is insured (para. 1); in the event of a temporary drop in salary due to illness, accident, unemployment, parenthood, adoption or similar reasons, the previous coordinated salary is maintained (para. 3).	Quantifies the loss of benefits resulting from the holiday purchase (here approx. CHF 2'105) and shows that the protective provision of para. 3 precisely does not apply.
Art. 329a OR	Entitlement to at least four weeks of holidays per year of service, five weeks until the age of 20 is reached (para. 1); pro rata entitlement in an incomplete year of service (para. 3).	Mandatory lower limit (Art. 362 para. 1 OR) that the holiday purchase may not touch — core of the permissibility assessment.
Art. 329d OR	Full holiday pay during holidays (para. 1); prohibition of compensation during the employment relationship (para. 2).	Para. 1 is mandatory in favour of employees (Art. 362 para. 1 OR), para. 2 mandatory for both parties (Art. 361 para. 1 OR); benchmark for allegations of circumvention under BGE 118 II 136.
Art. 323b OR	Written payslip (para. 1); set-off of counterclaims only to the attachable extent (para. 2); nullity of agreements on the use of salary in the employer's interest (para. 3).	Limits structuring the purchase price deduction as a set-off; under Art. 361 para. 1 OR para. 2 is mandatory for both parties and cannot be waived by consent.
Art. 22 UVV	Maximum amount of insured earnings CHF 148'200/year (para. 1); insured earnings are the salary relevant for AHV purposes (para. 2); for the daily allowance, the last salary received before the accident applies (para. 3).	Explains why a month with a full purchase price deduction can distort the amount of the daily allowance — key argument for staggering the deduction.

Article	Content	Doctrinal significance
Art. 3 BVV 2	In its regulations, the pension fund may deviate from the salary relevant for AHV purposes, disregard occasional salary components, determine the coordinated annual salary in advance on the basis of the last known annual salary (para. 1) or rely on the salary paid per payment period; in the event of a temporary drop below the minimum amount, coverage is maintained (para. 2).	Decides whether and to what extent the purchase price deduction reduces the coordinated salary at all — the calculation is reliable only with the specific regulations.
Art. 1 BVV 2	Appropriateness of the pension plan: benefits of at most 70% of the last insurable salary subject to AHV contributions, or retirement credits of at most 25% of the insurable salaries subject to AHV contributions (para. 2).	Outer limit for maintaining the previous coordinated salary under the regulations in the event of a holiday purchase and unpaid leave.
Art. 1 UVV	An employee within the meaning of Art. 1a para. 1 UVG is anyone who carries on a dependent gainful activity within the meaning of the AHV legislation.	Demonstrates that insured status is linked to the qualification under AHV law and not to the amount of salary in an individual month; the holiday purchase does not affect it.
Art. 2 BVG	Employees over 17 with an annual salary of more than CHF 22'680 are mandatorily insured (para. 1); in the case of employment for less than one year, the salary converted to a full year applies (para. 2).	Coverage provision for your employees; shows that the purchase price deduction is far from affecting the entry threshold.
Art. 3 BVG	Occupational groups of self-employed persons are subject to mandatory insurance only upon application by the professional associations.	Delimits the substantive scope of coverage: for employees, only Art. 2 para. 1 BVG applies, which is why the holiday purchase raises no question as to the type of coverage.

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