HEUKING KÜHN LÜER WOJTEK

Newsletter
Employment Law

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No entitlement to continued employment abroad after termination for operational reasons

Extent of working hours in the absence of a provision in the employment contract?

Differentiation between an employment contract or contract for work and services and the supply of temporary workers

New developments on the dynamic application of collective labor agreements after the transfer of undertakings

A works council can refuse to consent to permanent use of temporary agency workers

Compensation due to discrimination based on a severe disability

Offshore Working Hours Ordinance

Table of Contents

Editorial

Dear readers,

We are pleased to send you our Employment Law Newsletter in the new design.

In order for you to maintain an overview of the rapid case law developments in employment law, we have included in the new issue of our newsletter a selection of important judgments that are relevant in practice.

First, Fabienne Grun deals with the differentiation between an employment contract or contract for work and services for the supply of temporary workers. In particular, she describes according to which criteria the differentiation must be made. In his article, Dr. Klaus Olschewski deals with the question of the extent of working hours in the absence of a contractual employment provision and describes, in particular, how contracts lacking a provision with regard to weekly working hours must be interpreted. Regina Glaser, LL.M. (Boston) discusses in her article the question of whether an employee is entitled to employment abroad after a termination for operational reasons. In his article, Mike Bogensee, LL.M. (London) deals with the question of compensation due to a discrimination against a job applicant in the case of promotion decisions due to severe disability. Finally, Bernd Weller in his article addresses the question of whether the works council can deny its consent to the permanent use of temporary workers and in this connection discusses in particular the scope of information rights of the works council.

Finally, we would like to draw your attention already to our annual series of seminars on current topics of employment law, which will be held at all of Heuking Kühn Lüer Wojtek's offices. We would like to wish you an exciting and interesting time reading our newsletter.

Regina Glaser **Astrid Wellhöner**

Regina Glaser, LL.M.
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Düsseldorf
r.glaser@heuking.de

Astrid Wellhöner, LL.M. Eur.
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Munich
a.wellhoener@heuking.de

Articles
Employment Law

The Employment Law Practice Group consists of a team of lawyers specializing in employment law and certified specialist lawyers for employment law. We advise and represent national and international companies in all fields of employment law. In our articles, we discuss important new developments, legislative amendments, and the current case law in the field of employment law.

No entitlement to continued employment abroad after termination for operational reasons

There is no obligation by the employer to continue to employ the employee abroad after a termination for operational reasons.

Federal Labor Court,
Judgment of August 29, 2013, 2 AZR 809/13

Regina Glaser, LL.M.
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Düsseldorf
r.glaser@heuking.de

Facts of the Case

The case, which was submitted to the Federal Labor Court for a decision, entailed a company in the textile industry with its registered office in North Rhine-Westphalia, which has a production facility in the Czech Republic. In June 2011, the company decided to shut down its manufacturing plant in North Rhine-Westphalia. Only management along with the commercial department was to remain in Germany. Therefore, the company issued ordinary termination notices to its manufacturing department employees in North Rhine-Westphalia. The plaintiff, employed as a manufacturing employee in North Rhine-Westphalia since 1984, maintained that the termination was socially unjustified since the company would have been obligated to offer her an opportunity for continued employment in the manufacturing plant in the Czech Republic.

Contents of the decision

The action for protection against unfair dismissal – just as in the courts of lower instance – was rejected by the Federal Labor Court. In the grounds for its decision, the Federal Labor Court held that due to the relocation of "Manufacturing" to the Czech plant several hundred kilometers away from the defendant company's headquarters, the company had had no possibility for the continued employment of the plaintiff in a domestic plant. The court also pointed out that circumstances, under which the continued employment of the plaintiff abroad could be considered, were not in evidence. The employer's obligation arising from Section 1(2) German Protection Against Unfair Dismissal

Act to offer the employee a possibility of continued employment under altered, possibly significantly worse working conditions, in order to avoid a termination, where possible by means of a dismissal with the option of altered conditions of employment, does not in principle apply to job vacancies in a plant of the employer that is located abroad.

In this connection, the Federal Labor Court refers to the fact that the Protection Against Unfair Dismissal Act only applies to enterprises which are located in the Federal Republic of Germany. The Federal Labor Court further points out that the term of enterprise also has to be understood in this sense. Finally, the Federal Labor Court thereby clarified that the Protection Against Unfair Dismissal Act is in principle only applicable when the enterprise is located in the Federal Republic of Germany. It remains to be seen, however, how the Federal Labor Court decides cases in which the enterprise is located close to the border of other countries.

The court left unresolved whether these principles also apply where the employer relocates his undertaking as a whole or an essential part thereof while preserving its identity. Also, the court did not deal with the question under what conditions the continued employment obligation of the employer could possibly exist.

Conclusion: The Federal Labor Court clarified that a possibility of continued employment in an enterprise located abroad does not in principle conflict with a termination for operational reasons.

Extent of working hours in the absence of a provision in the employment contract?

Federal Labor Court,
Judgment of May 15, 2013, 10 AZR 325/12

Dr. Klaus Olschewski
Lawyer
Office: Cologne
k.olschewski@heuking.de

If an express agreement on the length of working hours is lacking in the employment contract, it must be presumed that the parties also wanted to agree the normal operating working hours for employees not covered by collective labor agreements.

The plaintiff had been employed by the defendant as an employee not covered by collective labor agreements. In the employment contract, a provision on the specific extent of the working hours was lacking. The parties had only agreed on the plaintiff's obligation to work in the scope of the performance of her job even outside the normal operating working hours. Moreover, plaintiff's entire work for the defendant was to be compensated with the remuneration (of most recently approx. EUR 95,000.00 gross per year). After a significant number of minus hours had accumulated in the working hours account of the plaintiff according to the submission of the defendant, the defendant instructed the plaintiff to work at least 7.6 hours daily and to maintain the normal operating weekly work schedule of 38 hours. Nevertheless, in the following month the plaintiff only worked 19.8 hours. Accordingly, the defendant retained a part of the salary. The plaintiff opposed this with her complaint. She maintained that she did not have to work at certain times. The extent of her work was determined solely by the scope of the tasks assigned to her. She had always complied with her duty to complete the tasks assigned to her. The defendant had simply not entrusted her with a sufficient number of orders.

Normal operating working hours

The Tenth Division of the Federal Labor Court issued a clear rejection of the complaint – just as the courts of lower instance had already done. Despite the absence of an express provision in the employment contract, the plaintiff was obligated to work 38 hours weekly for the defendant. This arised from the appropriate interpretation of the employment contract. In the present case, a full-time employment relationship had been agreed. Although a specific provision was lacking with regard to the working hours, it was (nevertheless) evident for an honest and reasonable employee that an obligation to perform the job to the extent of the normal operating working hours for a full-time employee was to be established through the employment contract. In the absence of a provision of the extent of working hours, it typically corresponds to the contractual intent

of reasonable and honest contractual parties to take the normal operating working hours as the basis.

An employee who enters into a full-time employment relationship must, if no other criteria exist, obviously anticipate having to work as much as other full-time employees of the employer. This applies all the more if the contractual parties – as in the present case – had agreed upon the obligation to work even outside the normal operating working hours. In any event, the agreement made in the employment contract would therefore offer no starting point for presuming that the work was not owed at least to the normal operating extent. Lack of clarity within the meaning of Section 305c(2) German Civil Code would therefore not be in evidence in the present case also because in the defendant's business a working time of 38 hours per week was usual for all groups of employees. Also, the plaintiff could derive no legal consequence favorable to her from a (possible) violation of Section 2(1) sentence 2 no. 7 German Act of Proof of Substantial Conditions Applicable to the Employment Relationship. Regarding the extent of normal operating working hours in the case of employers bound by collective agreements, the collectively agreed upon working hours are to be used as a basis. This also applies to employees not covered by collective labor agreements, with whom a specific work schedule was not agreed upon.

Conclusion: The decision must be agreed to. Where a specific provision of the extent of working hours is lacking in the employment contract, the employee is obligated to perform his job within the normal operating time scale. In no case, however, may the decision lead to waiving a provision regarding the length of working hours in the employment contract. This already arises from the fact that the normal operating working hours in a business do not – as in the underlying case here – have to be designed uniformly. Instead of exposing oneself to uncertainties, a clear provision should therefore be included in the employment contract, which at the same time also serves to meet the obligations to furnish proof as per Section 2(4) Act of Proof of Substantial Conditions Applicable to the Employment Relationship. The case shows once again what consequences an inadequate design of the employment contract may entail.

Differentiation between an employment contract or contract for work and services and the supply of temporary workers

Baden-Württemberg Higher Labor Court,
Judgment of August 1, 2013, 2 Sa 6/13

Fabienne Grun
Lawyer
Office: Frankfurt am Main
f.grun@heuking.de

The actual implementation of the contract is solely governing the legal differentiation of the employment contract or contract for work and services for the supply of temporary workers. The burden of proof for those circumstances from which the existence of the supply of temporary workers arises is the responsibility of the employee.

The two plaintiffs worked under an employment contract as freelancers for an IT systems house (here: E). This IT systems house functioned at the same time as a subcontractor for a leading IT service provider (here: C). The service provider employed the plaintiffs as IT specialists and IT advisors exclusively at Daimler AG (defendant) in the framework of a contract for work and services with Daimler AG from 2001 until the end of 2011. C had overall responsibility for the implementation of the projects under the law of contracts for work and services. The individual orders of C were to be carried out exclusively via a "ticket system." A ticket included the order description and the placing of the order and could be requested by any of the defendant's employees. The request was then to be transmitted to C as contractor, who then had to arrange for the performance and assigned the orders accordingly.

After termination of the contracts for work and services between the defendant and C and subsequent termination of the contracts between the plaintiffs and E, the plaintiffs sued to establish that an employment contract had been concluded with the defendant on the basis of the illegal supply of temporary workers as per Section 10(1) sentence I in conjunction with Section 9(1) German Temporary Employment Act.

Stuttgart Labor Court had initially rejected the complaints. The appeal before the Higher Labor Court was successful. The Higher Labor Court denied the existence of a contract for work and services and, using the criteria established by the Federal Labor Court for the differentiation of the supply of temporary workers from employment contracts and contracts for work and services, affirmed that a case of illegal supply of temporary workers was concerned.

From the point of view of the Higher Labor Court, the legal distinction between employment contracts/contracts for work and services and the supply of temporary workers depends above all on whether the employees are integrated into the operation of the third party (defendant) and whether they receive instructions from the third party in terms of an employment contract.

Integration in the workforce

The plaintiffs were integrated in the defendant's operations and received instructions from the defendant's employees to a large extent. The integration followed from the fact that the plaintiffs worked jointly with the defendant's employees in an office assigned to them at certain times with work equipment made available by the defendant. In addition, they regularly received instructions in terms of employment law from the defendant's employees. The ticket system agreed upon between the alleged contracting company and the defendant existed only on paper and was not practiced in many cases. Rather, the plaintiffs were instructed directly by employees of the defendant. Also, these were not merely atypical individual cases.

Actual business contents?

The decision shows once again that many an employment contract is indeed theoretically conclusive, but not practicable. The more the outsourced task is intertwined with internal procedures and depends on the direct communication with employees, the more difficult it is to maintain the necessary organizational separation of the work. In view of this development, it can only be recommended to companies to ensure in cases that are unclear that the contractor has a valid hiring permit as per Section 1 German Temporary Employment Act.

Conclusion: The business contents and not the designation selected by the parties governs the legal classification of the contract. The business contents may arise both from the express agreements of the parties and from the practical implementation of the contract. If the two conflict, the actual implementation will be governing.

New developments on the dynamic application of collective labor agreements after the transfer of undertakings

ECJ, July 18, 2013 - Case C-426/11, Mark Alemo-Herron and Others v Parkwood Leisure Ltd

Dr. Judith Neu
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Munich
j.neu@heuking.de

Collective labor agreement reference clauses in employment contracts are not enforceable as an individual right against the transferee after the transfer of an undertaking, if the transferee as new employer did not in principle have the possibility to participate in the collective bargaining on the collective labor agreements, which were concluded after the transfer of the undertaking.

The plaintiffs were originally employed by a London borough council. With regard to the working conditions, their employment contracts made reference by analogy to the collective labor agreements for municipal services. In 2002, the borough council contracted out one of its services to a private sector undertaking, which resold the same business to another private company two years later. The employment relationships of the employees, who were employed in the department, passed over in each case to the new transferee in the course of the transfer of the associated undertaking. During one of the following rounds of collective bargaining for the municipal services, pay increases were then agreed. The new employer refused to pass these on to the employees. He invoked the fact that he had not participated in the collective bargaining and also could not do so, because as a private company he was not part of the public administration. The employees thereupon brought a claim for payment.

The British Supreme Court referred the matter to the European Court of Justice. The Court of Justice concluded that the transferee does not have to grant the pay increases, which took place after the transfer of the undertaking, to the plaintiffs. The employment relationships no longer participate in the dynamic development of the collectively agreed working conditions. According to the European Court of Justice, this is the case in any events where the transferee does not have the possibility of participating in the negotiation process of such collective agreements. Otherwise, it is unreasonably limited in its freedom to conduct a business. The transferee must be able to assert its interests effectively in a contractual process to which it is party and to negotiate the aspects determining changes in the working conditions of its employees with a view to its future economic activity.

The decision of the European Court of Justice is also highly relevant for German law. According to Section 613a(1) sentence 1 German Civil Code, the transferee takes over the rights and duties of the employment relationship, as they exist at the time of the transfer of the undertaking. A dynamic collective labor agreement reference clause in the employment contract therefore remains in principle unchanged at the transferee. According to the previous understanding of the law, the new employer was obligated to pass on later increases in pay rates to employees affected by the transfer of an undertaking as an individual right. According to the European Court of Justice, the standard must now be interpreted restrictively. It remains to be seen how the Federal Labor Court will implement this case law in the future.

Conclusion: Private companies, which acquire businesses or parts thereof, which previously were part of public authorities or companies of another industry, should carefully examine whether they are actually obligated to dynamically apply collective labor agreements after the transfer of an undertaking.

A works council can refuse to consent to permanent use of temporary agency workers

Federal Labor Court, Order of July 10, 2013 - 7 ABR 91/11

Bernd Weller
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Frankfurt
b.weller@heuking.de

Companies may hire agency workers only on a temporary basis. If the employer does not notify the works council of a duration of use, the works council can object to the hiring of the temporary agency workers.

An employer hired a temporary agency worker – for a vacant permanent staff position. When providing information according to Section 99 German Industrial Relations Act, the employer failed to indicate to the works council a termination date for the planned use of the temporary agency worker. The works council objected to the hiring on the grounds that the use of the temporary agency worker represented a violation of the law. According to Section 1(1) sentence 2 of the Temporary Employment Act in the version effective since December 1, 2011, the supply of employees to hirers may only take place "temporarily."

According to Section 99 Industrial Relations Act, the employer must notify the works council about any planned hiring of employees and temporary agency workers. The works council then has the right to object to the hiring within one week. In such event, the employer may not employ the temporary agency worker / new employee until the decision of the works council is "overruled" in court. Ultimately, the employer can enforce such a hiring only at considerable cost and with the help of legal assistance.

Content of the information

By means of Section 99 Industrial Relations Act, works councils have already waged a campaign for years against temporary work and have attempted to prohibit such with a wide range of requirements concerning notification procedures. Thus, it was, for example, enforced that

- when providing information, an authorization of the supply of temporary workers must be submitted as per Section 1 Temporary Employment Act,
- the name of the temporary agency worker must be provided,
- the proof of the request of any severely disabled persons at the employment agency must be provided and
- the job of the temporary worker must be advertised in the business in advance, even if the temporary worker is only supposed to be employed for a few days.

Conversely, the demands failed for

- disclosing the remuneration of the temporary agency worker,
- a priority review of internal extension of working hours.
- Also, a possible violation of the equal pay principle in the Temporary Employment Act was not accepted by the Federal Labor Court as grounds for the works council to refuse consent.

Immediately after amendment of the Temporary Employment Act in December 2011, the next wave was started. The now mandatory "temporary" character of the supply of temporary workers has triggered a number of proceedings. In the various decisions of the Higher Labor Courts, the spectrum reaches from the irrelevance of this amendment (Lower Saxony Higher Labor Court) is sufficient to ascertain that in any case the criterion of the German Act on Part-Time Work and Fixed-Term Contracts could not be applied by analogy (Düsseldorf Higher Labor Court) up to the view that even the expressly limited use of temporary agency workers independent of the length of the limitation violates Section 1(1) sentence 1 Temporary Employment Act, if the temporary agency worker is hired for a permanent job (Berlin-Brandenburg Higher Labor Court).

The Federal Labor Court had to decide in the present case that in any event, according to the information as per Section 99 Industrial Relations Act, the unlimited use is no longer temporary within the meaning of the Temporary Employment Act and that this represents a violation of the law within the meaning of Section 99(2)(1) Industrial Relations Act, which justifies the work council's refusal to consent.

Conclusion: In using temporary agency workers, employers must ensure that an expected end date for the use, therefore, a time limit is indicated to the works council. It is still unresolved whether, and if so which, maximum time limit the Federal Labor Court regards as justified. Several proceedings are already pending, which are eagerly awaited by the entire temporary employment industry. We will keep you up to date.

Compensation due to discrimination based on a severe disability

Federal Labor Court,
Judgment of August 22, 2013 - 8 AZR 574/12

In the decision on the job application of a severely disabled person, the employer always has to involve the representative body for disabled employees according to Section 81(1) German Social Security Code IX. This applies even where the representative of the severely disabled is also among the job applicants. A violation of this obligation to participate may indicate a discrimination against the job applicant due to his disability.

Mike Bogensee, LL.M. (London)
Lawyer
Office: Hamburg
m.bogensee@heuking.de

In the case decided by the Federal Labor Court, a casino in Berlin had advertised two positions as "table supervisor." Thereupon, the representative of the severely disabled employees in the company and his deputy applied for the positions.

The employer notified the representative of the severely disabled that due to an existing conflict of interest from the employer's point of view, the employer would involve neither him nor the plaintiff as his deputy in the selection decision. The employer ultimately decided upon two other candidates. In the selection decision, the job applicant saw himself discriminated against as a severely disabled person, which was shown by the failure to involve the representative body for disabled employees.

The deputy representative of the severely disabled filed a complaint against the decision due to discrimination and demanded compensation in accordance with the General Equal Treatment Act. The courts of lower instance rejected the complaint. The plaintiff's appeal was successful before the Federal Labor Court.

According to the Federal Labor Court, the representative body for disabled employees ought to have been involved in the decision on the plaintiff's job application in accordance with Section 81 Social Security Code IX. This was not in conflict with the fact that the representative of the severely disabled persons himself and the deputy had applied for the positions to be filled. The job applicant would have been able to prevent a possible conflict of interests between applicants, in that according to Section 81(1) sentence 10 Social Security Code IX he could have expressly refused the involvement of the representative of the severely disabled as his direct competitor for the position to be filled. In contrast, the employer was not responsible for refraining from the

participation of the representative body for disabled employees as provided by law.

Even a competitive situation does not permit the employer to independently waive a hearing.

The Federal Labor Court remanded the case to the Higher Labor Court for a new hearing and decision. The latter will have to clarify whether the violation of the obligations to promote severely disabled persons according to Social Security Code IX in the present case represents a discrimination against the plaintiff and whether the employer may be able to justify his approach such that a claim of the plaintiff for damages according to the General Equal Treatment Act is precluded.

Conclusion: Both public and private employers must be urgently advised to comply with the procedural rules of Social Security Code IX for compensation and damage claims as per Section 15(1), (2) General Equal Treatment Act of rejected severely disabled job applicants. The Federal Labor Court regularly evaluates procedural errors as an indication of an impermissible discrimination due to a disability. If the rejected job applicant can demonstrate and prove a procedural error, it is presumed according to Section 22 General Equal Treatment Act that he was impermissibly discriminated against. In such event, the employer must demonstrate and prove that there was no violation of the provisions for the protection against discrimination. Based on experience, this proof can only be provided with great difficulty.

Offshore Working Hours Ordinance

On June 7, 2013, the Federal Council of Germany agreed to the ordinance decided upon by the Federal Cabinet on April 24, 2013 concerning the working hours for offshore activities (Offshore Working Hours Ordinance – Federal Law Gazette I 2013 no. 36, p. 2228). The ordinance enters into effect as of August 1, 2013.

Dr. Kai Bandilla
Lawyer
Office: Hamburg
k.bandilla@heuking.de

Dr. Johan-Michel Menke, LL.M.
Lawyer
Certified Specialist Lawyer for Employment Law
Office: Hamburg
j.menke@heuking.de

The ordinance adjusts particularly the working hours for employees and crewmembers in the case of offshore activities to the special conditions in this environment. It thereby creates jointly with the extension of the Act on Working Hours to the exclusive economic zone and the Maritime Labor Act, the long overdue uniform legal framework for offshore activities, particularly for the erection of offshore wind farms.

The ordinance is to permit a more flexible organization of working hours and to ensure better labor protection measures. The Act on Working Hours, which has also been amended, as well as the Maritime Labor Act entering into force at the same time on August 1, 2013 (Maritime Labor Act – Federal Law Gazette I 2013, p. 868) are partially amended by the Offshore Working Hours Ordinance, but are governing in large parts.

The new Offshore Working Hours Ordinance enters into force as of August 1, 2013

The following amendments to the existing legal situation ensue in detail:

Flexible working hours for offshore activities

The Offshore Working Hours Ordinance affects special regulations under the working hours law for those employees who perform offshore activities within the meaning of Section 15(2a) Act on Working Hours. It applies in the territorial sea, in the exclusive economic zone as well as on ships from which offshore activities are carried out.

In particular, from now on the possibility exists of extending the daily working hours to twelve hours (Section 3(1) Offshore Working Hours Ordinance). Likewise, work on Sundays and holidays is largely allowed. 15 Sundays per year, however, must continue to remain days off from work (Section 11(1) Act on Working Hours).

Work organization in two-shift system

The period of offshore work is limited to a maximum of 21 immediately successive days (Section 6(1) Offshore Working Hours Ordinance). If the daily working hours are extended beyond ten hours for more than seven days, the employee may be em-

ployed at most for 14 immediately successive days in offshore work (Section 6(2) Offshore Working Hours Ordinance), so that twelve-hour shifts are possible over 14 days.

Offshore work can thus be organized in a two-shift system.

Compensation for overtime through exemption from work phases

An uninterrupted exemption phase must immediately be accompanied as compensation by a phase with extended daily working hours beyond ten hours (Section 7(2) Offshore Working Hours Ordinance). Compensation for overtime, i. e. each extension of working hours beyond eight hours daily in the offshore area, is given through additional days off on land. Special provisions (Section 9 Offshore Working Hours Ordinance) apply to the consideration of transport times to the construction site.

Moreover, the Offshore Working Hours Ordinance makes provisions under the working hours law for crewmembers on ships from which offshore activities are carried out. The working hours of the crewmembers can be extended to twelve hours, without a special exceptional case according to Section 47 Maritime Labor Act having to exist (Section 12 Offshore Working Hours Ordinance). In addition, a deviation is made possible from the Offshore Renewable Energy Installation lookout system of Section 43 Maritime Labor Act.

The employer is obligated to record all of the working hours daily, as well as the compensation for overtime above eight hours and the replacement days off for Sunday and holiday employment. In offshore work, however, working hours above eight hours on workdays regularly accrue anyway, which according to Section 16(2) Act on Working Hours must be recorded, so that practically no change occurs here.

The possibility of an occupational health examination is introduced in accordance with the provisions of Section 6(3) Act on Working Hours (night work). Since working offshore oftentimes requires work to be performed in shifts with night work, a lion's share of the employees is already covered by the Act on Working Hours so that here no change occurs in actuality.

Flexibility through certificates of exemption

Further flexibility is to be granted through the possibility of obtaining the approval of exemptions by the responsible supervisory authorities. Violations are administrative offenses or enforced by penalty and penalized with a fine by appropriate references to the Act on Working Hours and the Maritime Labor Act.

From our Practice
Employment Law

Heuking Kühn Lüer Wojtek provides you with information on employment law through regular events, as well as lectures and publications by the Employment Law Practice Group on topics of relevance to our clients' everyday lives. On the following pages, we would like to give you an overview of the most recent team additions and current awards of our Employment Law Practice Group.

Event Information

Series of seminars on employment law
October 10, 2013
Heuking Kühn Lüer Wojtek, Chemnitz
November 5, 2013
NH Hotel Friedrichstraße, Berlin
November 12, 2013
Heuking Kühn Lüer Wojtek, Düsseldorf
November 14, 2013
Heuking Kühn Lüer Wojtek, Hamburg
November 21, 2013
Pullman Cologne, Cologne
November 21, 2013
Heuking Kühn Lüer Wojtek, Munich
November 26, 2013
Heuking Kühn Lüer Wojtek, Frankfurt

Again this year, the Employment Law Practice Group will hold its seminar on current employment law topics at all of our German offices.

The following topics will be addressed in October and November 2013:

- Current problems of hiring temporary workers
- Selected questions about the works council election in 2014
- Current problems of employee data protection
- Selected questions of law in the case of competitive behavior of employees
- Current case law on the dismissal for operational reasons
- Current questions about variable remuneration
- Threshold values with regard to applicable laws
- Sick employees – what to do?

The events with presentations will take about 2 hours each. Afterwards, the opportunity exists to ask our speakers further questions in a get-together.

Should you have any questions, please contact Ms. Ann Carolin Endres at 0211 60055-173 or by email at a.endres@heuking.de.

Additional information on our seminars can be found on our website at **www.heuking.de/veranstaltungen**

Team

Eva Schreiber, LL.B.
Office: Hamburg
Joined the team in October 2013
e.schreiber@heuking.de

Since October 2013, **Eva Schreiber, LL.B.** has strengthened the Employment Practice Group at Heuking Kühn Lüer Wojtek's Hamburg office, where she assists the department of Dr. Andreas Walle. Previously, she had already worked as legal trainee at Heuking Kühn Lüer Wojtek in Hamburg. Additional stations of her legal traineeship were in Hamburg and Cape Town. She advises primarily national and international companies on issues related to public employment law and labor law. Ms. Schreiber studied at Bucerius Law School and at Victoria University, Wellington, New Zealand.

Publications and presentations

In "FAZ-Personaljournal," August 2013 issue, **Joachim Littig** published a guest commentary at the occasion of a current judgment of the Federal Labor Court on the topic of "What employers must pay attention to in the case of a termination."

Jointly with Christoph Katerndahl, **Dr. Wilhelm Moll, LL.M.,** published an explanatory note on the judgment of the Federal Labor Court of August 17, 2011 5 AZR 406/10, AP No. 55 on Section 307 German Civil Code on the flat-rate compensation of overtime.

Astrid Wellhöner, LL.M., gave an interview to "Personalmagazin" on the non-application of two Federal Financial Court judgments regarding tax-free wage subsidies by the financial administration. The interview "Pay attention to strict separation" was published in the 9/2013 issue.

Dr. Johan-Michel Menke, LL.M. will speak on "Due Diligence under employment law" at the workshop of the same name held by Forum – Institut für Management in January 2014.

HEUKING KÜHN LÜER WOJTEK

www.heuking.de

Responsible Editors:
Regina Glaser, LL.M., Düsseldorf
Astrid Wellhöner, LL.M. Eur., Munich

This issue and all other issues of the Employment Law Newsletter can be found on the Internet at www.heuking.de/en/ueber-uns/newsletter.html.

Berlin
Unter den Linden 10
10117 Berlin/Germany
T +49 30 88 00 97-0
F +49 30 88 00 97-99

Brussels
Avenue Louise 326
1050 Brussels/Belgium
T +32 2 646 20-00
F +32 2 646 20-40

Chemnitz
Weststrasse 16
09112 Chemnitz/Germany
T +49 371 38 203-0
F +49 371 38 203-100

Cologne
Magnusstrasse 13
50672 Cologne/Germany
T +49 221 20 52-0
F +49 221 20 52-1

Düsseldorf
Georg-Glock-Strasse 4
40474 Düsseldorf/Germany
T +49 211 600 55-00
F +49 211 600 55-050

Frankfurt
Goetheplatz 5-7
60313 Frankfurt a. M./Germany
T +49 69 975 61-0
F +49 69 975 61-200

Hamburg
Neuer Wall 63
20354 Hamburg/Germany
T +49 40 35 52 80-0
F +49 40 35 52 80-80

Munich
Prinzregentenstrasse 48
80538 Munich/Germany
T +49 89 540 31-0
F +49 89 540 31-540

Zurich
Bahnhofstrasse 3
8001 Zurich/Switzerland
T +41 44 200 71-00
F +41 44 200 71-01

LAWYERS AND TAX ADVISORS
Berlin Brussels Chemnitz Cologne Düsseldorf Frankfurt Hamburg Munich Zurich