

Stay up to date with us

With our GÖRG Employment Tracker we look into the "future of labour law" for you on a regular basis! At the beginning of each month, we refer to the most important decisions expected for the month from the Federal Labour Court (BAG) and the European Court of Justice (ECJ) as well as other courts. We also keep you informed on the respective outcome in the following month. In addition, we draw your attention to important upcoming legislative initiatives in employment law. As a result, you will know today what you can expect tomorrow.

Upcoming decisions

With the following overview on upcoming decisions in the month to come, you will be informed in advance about the legal issues to be decided shortly and the impact these may have for legal practice!

Subject	Date/AZ	Remark/ note for the practice
Federal Labour Court		
Limitation of holiday claims	07.07.2020 - 9 AZR 665/19 -	The Federal Labour Court decides on the statute of limitations for vacation claims from the years 2011 to 2013. The plaintiff, who was employed by the defendant until September 30, 2019, claims that he was not able to take holiday during this period due to the workload. The Munich Regional Labour Court (LAG München) had partially ruled in favor of the plaintiff and decided that vacation claims in the amount of 38 days from the years 2011 to 2013 were not statute-barred because the defendant had not sufficiently sought to ensure that the plaintiff actually took his holidays.
Forfeiture of holiday claims booked into a lifetime working time account	07.07.2020 - 9 AZR 245/19 -	The Federal Labour Court decides on the forfeiture of the plaintiff's holiday claims from the years 2010, 2011 and 2014, which he had booked in 2011 and 2015 into a lifetime working time account established with the defendant employer. Since December 1, 2014, the plaintiff has been receiving a pension due to full reduction in earning capacity. The defendant is of the opinion that the holiday claims booked to the lifetime working time

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		account forfeited on March 31 of the following year. A further transfer of the holidays was precluded by the fact that the employment relationship was suspended due to the receipt of the reduced earning capacity pension.
Employer's obligation to inform the employer about the forfeiture of holiday claims in case of long-term illness	07.07.2020 - 9 AZR 401/19 -	The plaintiff asserts that her holiday claims did not forfeit during her incapacity to work because the defendant employer did not inform her in time of the imminent forfeiture of her holiday claims. The Federal Labour Court will decide whether an employer must also point out an impending forfeiture of holiday claims when an employee is incapable of working due to illness. The previous instances have denied this and dismissed the action.
Obligation of the Pensions-Sicherungs-Verein (Pension Security Association) to pay the adjustment of a company pension and with regard to a reduction in pension payments	21.07.2020 - 3 AZR 142/16 -	<p>The Federal Labour Court decides whether and to what extent the Pensions-Sicherungs-Verein (Pension Security Association) is liable for the adjustment of company pensions and for a reduction in pension payments by the pension fund in the event of the insolvency of the former employer.</p> <p>In doing so, the Federal Labour Court must be guided by the specifications of the European Court of Justice, which had decided at the request of the Federal Labour Court that the EU states are obliged to "guarantee a certain level of protection" if reductions in company pensions are obviously disproportionate.</p>
Invalidity of a works agreement on variable remuneration	28.07.2020 - 1 ABR 4/19 -	The Federal Labour Court has to decide in particular on the question whether the employer and the works council can make the entry into force of a works agreement dependent on a quorum of consent of the employees. In the case to be decided, the entry into force of a works agreement on variable remuneration was made subject to the condition that 80% of the votes cast by the employees agree to it within a certain deadline. The previous instances have dismissed the actions seeking a declaration of invalidity of the works agreement.
Public statement of the works council via Twitter	29.07.2020 - 7 ABR 9 /19 -	The Federal Labor Court will decide whether and to what extent the works council is allowed to comment on operational matters via a Twitter account.

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European Court of Justice

Holidays for self-rearing female employees in France

09.07.2020

- C – 463/19 -

The European Court of Justice rules on a reference from the Conseil de prud'hommes de Metz (France) on whether the provisions of a national collective agreement in France, under which female employees who rear their children themselves are entitled to further paid and unpaid leave after their maternity leave, are excluded from the scope of the European directive on equal treatment of men and women in matters of employment law.

Legislative initiatives, important messages & applications

In this section, important initiatives, press releases and publications for the month are briefly and concisely summarised, so that you are always informed about new developments and planned projects.

Subject	Timeline	Remark/ note for the practice
<u>Advisory Council on Employee Data Protection takes up its work</u>	16.06.2020 Press release	<ul style="list-style-type: none"> ▪ Expert panel to develop concrete recommendations for more data protection for employees ▪ Makes recommendations regarding the need for a separate law on employee data protection ▪ Basis for the work of the Panel: <ul style="list-style-type: none"> ○ extensive consultations with associations and unions, companies, data protection officers, works councils and employees
<u>Cabinet extends simplified access to basic security</u>	17.06.2020	<ul style="list-style-type: none"> ▪ Extension of the regulations until 30 September 2020 ▪ Simplified Access Extension Regulation (VZVV) ▪ Temporary simplification of the asset audit ▪ Temporary recognition of actual expenditure on housing and heating ▪ Simplifications in the granting of a provisional decision ▪ Temporary adjustments for lunch ▪ Additional needs to finance lunch for people with disabilities
<u>Bringing digitisation and labour law together - creating modern legal frameworks for flexible working in terms of time and place</u>	18.06.2020 Status: not yet discussed	<ul style="list-style-type: none"> ▪ Request to the Federal Government <ul style="list-style-type: none"> ○ to strengthen mobile working through a legal right to consultation ○ to replace the maximum working day with a maximum weekly working time ○ to create opening clauses in the Working Time Act ○ to adapt the statutory accident insurance so that mobile working is also covered ○ to create the possibility of making works council work digital as well
<u>Improvement for posted workers</u>	19.06.2020 Press release Further procedure: 03.07.2020	<ul style="list-style-type: none"> ▪ Bundestag launches new regulation of the EU Posting of Workers Directive ▪ Purpose: <ul style="list-style-type: none"> ○ Improving the working conditions of posted workers ○ Protection of the economy against wage dumping and unfair competition ▪ Essential content: <ul style="list-style-type: none"> ○ Application of all elements of "remuneration" instead of only the provisions on "minimum

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	<p>Final consultation of the Federal Council</p> <p>30.07.2020</p> <p>Planned entry into force</p>	<p>remuneration“</p> <ul style="list-style-type: none">○ Preventing money received by employees to reimburse expenses from being offset against their remuneration○ Insofar as the working conditions listed in the law are regulated in generally binding collective bargaining agreements, they will in future apply to posted employees in all sectors○ Long-term expatriates should in principle benefit from all German working conditions
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