

Stay up to date with us

With our Employment Tracker we regularly look into the "future of labour law" for you! At the beginning of each month we present 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 report on the results in the issue of the following month. In addition, we point out upcoming milestones in legislative initiatives by politicians, so that you know today what you can expect tomorrow.

Upcoming decisions

With the following overview of upcoming decisions in the following month, you will be informed in advance about which legal issues will be decided shortly and what consequences this may have for legal practice!

Subject	Date/AZ	Remark/ note for the practice
Federal Labour Court		
Claim to information/provision of a copy pursuant to Art. 15 (3) DS-GVO	27.04.2021 - 2 AZR 342/20 -	The Federal Labor Court decides whether the employee can demand copies of his e-mail correspondence with the employer as well as e-mails that mention him personally pursuant to Article 15 (3) DS-GVO. The plaintiff was employed by the defendant. After being terminated by the employer, he requested information about his personal data processed by the employer. The employer provided this information and also made the stored personal data available to the employee as ZIP files. In his lawsuit, the employee claims, among other things, that the employer is also obligated to provide copies of the e-mails described above.
Validity/Revocation of the Appointment as Data Protection Officer	27.04.2021 - 9 AZR 383/19 -	The Federal Labor Court decides on the validity of the appointment and dismissal of the plaintiff as data protection officer. The plaintiff is an exempt works council member and deputy chairman of the central works council. In mid-2015, he was appointed by the defendant as company data protection officer and by the other companies belonging to the Group as external data protection officer. Two years later, the Thuringian State Commissioner for Data Protection and Freedom of Information, referring to § 4f BDSG (old version), determined that the plaintiff lacked the necessary reliability for the position of data protection officer due to his activity as works council chairman and the associated conflicts of interest. After the entry

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		into force of the DS-GVO, the defendant dismissed the plaintiff as data protection officer as a precautionary measure for operational reasons pursuant to Art. 38 (3) sentence 2 DS-GVO.
Damages - investigation costs	29.04.2021 - 8 AZR 276/20 -	The Federal Labor Court decides on the existence of a claim for damages by the employer for reimbursement of investigation costs in connection with allegations of expense and billing fraud. The employee worked as head of a central department. Following several anonymous tips about various compliance violations by the employee, the employer commissioned an external law firm to conduct an investigation. The law firm invoiced an amount of €200,000 for its work, which the employer is now demanding compensation from the employee by way of counterclaim. The lower court granted the claim for damages in the amount of €66,500. In its appeal, the employee seeks dismissal of the action.
Compensation payment - violation of prohibition of discrimination due to disability	29.04.2021 - 8 AZR 279/20 -	The Federal Labor Court decides whether the plaintiff is entitled to compensation pursuant to § 15 (2) AGG due to discrimination because of his severe disability. The plaintiff applied for a job advertised by the defendant with reference to his severe disability, but was not invited to an interview. The job advertisement required a university degree in political science, history or administration with at least the grade "good". The plaintiff had completed a corresponding course of study with the grade "satisfactory". In his opinion, the failure to invite him to the interview is an indication of discrimination because of his disability.

Legislative initiatives, important notifications & applications

This section provides a concise summary of major initiatives, press releases and publications for the month, so that you are always informed about new developments and planned projects.

Subject	Timeline	Remark/ note for the practice
<u>Mobile Work Act (MAG) – Second draft bill dated 14.01.2021</u>	14.01.2021	<ul style="list-style-type: none">▪ First draft bill dated 05.10.2020 → was stopped by the Chancellor's Office without departmental coordination having taken place▪ Second draft bill dated 14.01.2021<ul style="list-style-type: none">- The Trade Regulation Act shall stipulate that the employer shall discuss with the employee about his or her wish to work on a mobile basis- If the employment contract parties do not agree on the mobile work desired by the employee, the employer must justify its decision to refuse in due form and time- In the event of failure to do so: legal fiction to the effect that, in accordance with the wishes of the employee, mobile work is deemed to have been established for a maximum period of 6 months; fiction also in the event of non-discussion of the desire for mobile work.- The regulations on occupational health and safety remain unaffected → Employer must therefore assess the hazards arising from mobile work, define protective measures and instruct employees on the necessary health and safety measures.- It is ensured that the parties to the collective agreement and the company can continue to make their own regulations on mobile work- In the future, the entire working time of employees who regularly work from home must be recorded in full each day- In the future, employees who work from home will enjoy the same level of insurance cover as if they were working at the company's premises. In addition, the immediate journey to and from childcare facilities will be covered if the activity is carried out in the shared household.

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<p><u>First Ordinance Amending the SARS-CoV-2 Occupational Health and Safety Ordinance</u></p>	<p>10.03.2021</p>	<ul style="list-style-type: none"> ▪ Extension of the SARS-CoV-2 occupational health and safety regulation until April 30, 2021 ▪ Therefore, in particular, also extension of the home office regulation according to § 2 Section 4 Corona-ArbSchV, which requires the employer to offer employees in case of office work or comparable activities to perform the work from home, if there are no compelling operational reasons to the contrary
<p><u>Second Ordinance Amending the Short-time Allowance Ordinance</u></p>	<p>24.03.2021</p>	<ul style="list-style-type: none"> ▪ Extension of facilitated access to short-time allowance until June 30, 2021
<p><u>Draft Act to Promote Works Council Elections and Works Council Activities in a Digital Working World (Works Council Modernization Act) - Government Draft</u></p>	<p>31.03.2021</p>	<ul style="list-style-type: none"> ▪ Scope of application of the simplified election procedure is extended and the number of support signatures required for election proposals is reduced → Objective: To facilitate the establishment of works councils, especially in smaller companies ▪ For the active and passive right to vote of trainees for the youth and trainee representation, in the future only the status as a trainee is important; the age limit of 25 years is deleted ▪ Contestation of works council elections due to errors in the electoral list is restricted under certain conditions ▪ Persons who invite to election meetings and who are specially protected against ordinary dismissal is increased from three to six persons ▪ Additional introduction of special protection against ordinary dismissal for employees who document their intention to establish a works council in a notarized declaration and undertake the corresponding preparatory actions ▪ It is clarified that the rights of the works council in the design of the working environment and work processes also apply if artificial intelligence is to be used in the company ▪ Works councils are given a right of co-determination in the design of mobile work ▪ In the future, employers and works councils will be able to appeal to the conciliation body for mediation on issues relating to vocational training ▪ Conducting works council meetings by means of video and telephone conferencing should also be possible outside of the Covid-19-pandemic ▪ Works agreements, reconciliation of interests and social plan can be concluded with electronic signature in future ▪ Clarification that the employer is the controller in the sense of the DS-GVO when processing personal data

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		<ul style="list-style-type: none">▪ Works council and employer are obligated to support each other in complying with data protection regulations
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Local presence: your contacts



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