

## 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
<b>Federal Labour Court</b>		
<b>Social plan benefits - damages for age discrimination</b>	<b>27.05.2021</b> <b>- 8 AZR 303/20 -</b>	The Federal Labour Court decides whether the plaintiff is entitled to claim damages for age discrimination. The plaintiff had been working for the defendant since 1999, most recently in the marketing department. Since 2013, the plaintiff has been in partial retirement on the basis of a corresponding contract. According to the partial retirement contract, the employment relationship with the plaintiff was to end at the end of 30 September 2019. The defendant is a subsidiary of C.Z. AG. In October 2017, the employees became aware that so-called customer and market-related functions, which also included the marketing department, were to be bundled at C.Z. AG and relocated to another location. To this end, a "group works agreement, which is also a reconciliation of interests", and a social plan were signed in March 2018. Section 2 of the group works agreement provides that it applies to all employees at the location where the plaintiff also worked. According to Section 1 of the social plan, it also applies to all employees of this location, but not for those who have already signed an agreement on part-time work for older employees. Accordingly, none of the employees who had already signed a partial retirement agreement received a transfer offer. The plaintiff considers himself discriminated against because of his age.

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Federal Social Court		
<b>Accident insurance - as-occupational disease - post-traumatic stress disorder - rescue paramedics</b>	<b>06.05.2021</b> <b>- B 2 U 11/20 R -</b>	The Federal Social Court decides whether post-traumatic stress disorder (PTSD) is to be recognized as a so-called "as-occupational disease". The plaintiff was employed as a paramedic by the defendant and was deployed in the course of his work, among other things, during the rampage in Winnenden. In addition, he was confronted with several suicides. In 2016, the plaintiff submitted a discharge report in which, among other things, he was diagnosed with PTSD, which, according to the discharge report, was due to the traumatizing experiences in the rescue service. According to the discharge report, a return of the plaintiff to his job is not reasonable. The defendant rejected both the existence of an occupational accident and the recognition of PTSD as an occupational disease. In addition, it stated that the PTSD was not an "as-occupational disease" according to Section 9 para. 2 SGB VII. The action for recognition of an "occupational disease" and the plaintiff's appeal were unsuccessful. In his appeal, the plaintiff continues to pursue his claim for recognition of PTSD as an "as-occupational disease".
<b>Accident insurance - Occupational accident - Dispute with supervisor - Cardiac arrest</b>	<b>06.05.2021</b> <b>- B 2 U 15/19 R -</b>	The Federal Social Court decides whether a cardiac arrest shortly after an argument with a superior is to be recognized as an occupational accident. The plaintiff is employed as a bank clerk. She collapsed in April 2010 while sitting on her desk chair after an argument with the branch manager. She was subsequently admitted to a hospital as an inpatient and had a cardiac defibrillator implemented. Recognition of an occupational injury was denied on the grounds that the plaintiff suffered a heart attack during the course of her usual work and, to that extent, there was no accident. In April 2012, the plaintiff requested a review of the decision because she had not suffered a heart attack but a cardiac arrest shortly after an argument with the store manager. The defendant refused to withdraw the decision. Both the lawsuit and the plaintiff's appeal were unsuccessful. In her appeal, the plaintiff continues to pursue her claim for recognition of the cardiac arrest as an occupational accident.

## 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
<b><u>Fifth Ordinance Amending the Occupational Diseases Ordinance (5. BKV-ÄndV)</u></b>	08.04.2021	<p>The amending ordinance adds two diseases to the Occupational Diseases Ordinance:</p> <ul style="list-style-type: none"><li>▪ Lung cancer due to passive smoking</li><li>▪ Hip joint arthrosis due to load handling</li></ul>
<b><u>Draft law amending the general law on fixed-term contracts (draft bill)</u></b>	14.04.2021	<p>Restriction of fixed-term contracts without objective grounds in the TzBfG:</p> <ul style="list-style-type: none"><li>▪ In future, a fixed-term employment contract without objective reason will be permissible for a period of 18 months instead of the previous two years.</li><li>▪ Up to this total duration, a one-time instead of a three-time extension is possible.</li><li>▪ Fixed-term employment without an objective reason will continue to be restricted to new hires in order to limit chains of fixed-term employment contracts</li><li>▪ Employers who generally employ more than 75 employees may grant a fixed-term contract to a maximum of 2.5% of their employees without an objective reason</li></ul> <p>Chain fixed-term contracts will be further limited:</p> <ul style="list-style-type: none"><li>▪ Fixed-term employment contracts with an objective reason are not permitted if the total duration of the fixed-term employment relationships with the same employer exceeds a maximum duration of five years. This shall not apply to the factual grounds under Section 14 (1) sentence 2 no. 4 (specific nature of work performance) and Section 14 (1) sentence 2 no. 7 (court settlement). Periods during which the employee was assigned to the same employer as a temporary employee shall also be counted towards the maximum duration. Periods of fixed-term employment with the same employer and periods of previous assignment of the employee as a temporary employee to the same employer shall be counted towards the maximum period if there are no more than three years between the fixed-term employment relationships or assignments. After the expiry of three years, a fixed-term employment contract may be renewed if there is an objective reason for doing so.</li></ul>

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		<ul style="list-style-type: none"> <li>▪ Exceptions to the maximum duration apply to agreements to terminate the employment relationship upon reaching the standard retirement age and so-called in-service leaves of civil servants.</li> </ul>
<p><b><u>Second Ordinance Amending the SARS-CoV-2 Occupational Health and Safety Ordinance &amp; Third Ordinance Amending the SARS-CoV-2 Occupational Health and Safety Ordinance</u></b></p>	<p><b>20.04.2021</b> <b>21.04.2021</b></p>	<ul style="list-style-type: none"> <li>▪ Extension of the existing Corona occupational health and safety regulations of the SARS-CoV-2 occupational health and safety regulation until 30.06.2021.</li> <li>▪ In addition, employers are obliged to offer self-testing and rapid testing at least twice a week to all employees who do not work exclusively from home.</li> <li>▪ The regulations on home office, according to which the employer is obliged to offer employees in the case of office work or comparable activities to carry out the work from home if there are no compelling operational reasons to the contrary, will be deleted from the SARS-CoV-2 occupational health and safety regulation and included in the IfSG instead.</li> </ul>
<p><b><u>Fourth Law for the Protection of the Population in the Event of an Epidemic Situation of National Scope</u></b></p>	<p><b>22.04.2021</b></p>	<ul style="list-style-type: none"> <li>▪ Regulations on home office from the SARS-CoV-2 Occupational Health and Safety Ordinance are incorporated into Section 28b (7) IfSG.</li> <li>▪ In addition to the employer's obligation to offer home office, provided there are no compelling business-related reasons to the contrary, employees are now also obliged to accept the offer, provided there are no reasons to the contrary on their part (Section 28b (7) IfSG).</li> </ul>
<p><b><u>Pension Value Determination Ordinance 2021 (RWBestV 2021)</u></b></p>	<p><b>27.04.2021</b></p>	<ul style="list-style-type: none"> <li>▪ Adjustment of the current pension values in the statutory pension insurance and in the old-age pension scheme for farmers</li> <li>▪ Adjustment of the cash benefits of the statutory accident insurance</li> <li>▪ Adjustment to take place on July 01, 2021</li> </ul>

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