

Employment Tracker

August 2021



YOUR BUSINESS LAW FIRM

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		
No pre-reports		
European Court of Justice		
Court vacations		

Recent decisions

With the following overview of current decisions of the past month, you are informed which legal issues have been decided recently and what impact this may have on legal practice!

Subject	Date/AZ	Remark/ note for he practice
Federal Labour Court		
<p>Entitlement to Disability benefits Expected permanent incapacity for work Temporary granting of a reduced earning capacity pension</p>	<p>13.07.2021 - 3 AZR 445/20 -</p>	<p>The granting of a disability pension from the statutory pension insurance for a limited period only does not preclude an entitlement to an occupational disability pension if the pension commitment provides that a monthly disability pension will be paid "upon the occurrence of a presumably permanent total incapacity to work within the meaning of social insurance law".</p> <p><u>Facts of the case</u></p> <p>The plaintiff is employed by the defendant and received a pension commitment for retirement, disability and survivors' benefits in 2000. According to this, the plaintiff is to receive a monthly disability pension for life, but for no longer than the duration of the disability, in the event of an expected permanent total incapacity for work within the meaning of social security law.</p> <p>From June 1, 2017, to May 31, 2020, the plaintiff received a statutory pension for full reduction in earning capacity. The claim was limited in time because, according to the pension insurance company, it was not unlikely that the full reduction in earning capacity could be remedied.</p> <p>The plaintiff is therefore claiming disability benefits for the period from June 2017 to April 2020 inclusive. He is of the opinion that the requirements of the commitment are fulfilled because the temporary approval of the pension due to full reduction in earning capacity is harmless. According to Section 102 (2) SGB VI, the time limit is prescribed by law.</p> <p>The defendant is of the opinion that the requirements of the pension supplement are not met because the plaintiff's disability is not "expected to be permanent" but is only limited to three years.</p>

		<p>The Labor Court dismissed the action. The Schleswig-Holstein Regional Labor Court upheld the claim.</p> <p><u>The decision of the BAG</u></p> <p>The defendant's appeal was unsuccessful. The pension commitment requires a presumably permanent total incapacity to work within the meaning of social security law for the claim to occupational disability benefits. It thus refers to Sec. 44 (2) sentence 1 SGB VI in the version applicable when the pension commitment was issued and now to Sec. 43 (2) sentence 2 SGB VI. For the question of the presumably permanent total incapacity for work or complete reduction in earning capacity, the limited period of time provided for in §§ 99 ff. SGB VI is of no relevance to the question of the temporary granting of disability pensions from the statutory pension insurance, as these are merely procedural provisions which do not define the term "permanent total incapacity for work" within the meaning of social insurance law, which is referred to in the pension commitment.</p>
<p>European Court of Justice</p>		
<p>Discrimination on the grounds of religion or sex by an instruction of the employer</p> <p>Reference for a preliminary ruling by the Hamburg Labor Court</p>	<p>15.07.2021 - C-804/18 -</p> <p>(connected with C-341/19)</p>	<p>The prohibition of the wearing of any visible expression of political, philosophical or religious beliefs may be justified by the employer's need to project an image of neutrality to customers or to avoid social conflict.</p> <p><i>However, this justification must correspond to a genuine need on the part of the employer, and the national courts may, in balancing the rights and interests at stake, take into account the context of their respective Member States, and in particular the more favorable national rules with regard to the protection of religious freedom.</i></p> <p><u>Facts of the case</u></p> <p>The plaintiff, who is employed as a curative education nurse, wore an Islamic headscarf at her workplace. The employer instructed the plaintiff to take off the headscarf at her workplace because wearing such a headscarf was not in line with the policy of political, ideological and religious neutrality towards parents, children and third parties.</p> <p>After refusing, she was given two leaves of absence and a warning. The plaintiff therefore petitioned the Hamburg Labor Court to have the warnings removed from her personnel file. The Hamburg Labor Court</p>

		then asked the Court of Justice to interpret Directive 2000/78/EC.
--	--	--

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>Corporate Due Diligence in Supply Chains Act (<i>Lieferkettensorgfaltspflichtengesetz</i>)</u>	16.07.2021	<p>Companies based in Germany with a workforce of 3,000 or more will be required to better meet their human rights responsibilities and due diligence obligations in their supply chains. The due diligence obligations of companies include:</p> <ul style="list-style-type: none"> • Establishing a risk management system and conducting a risk analysis • Adopting a policy statement of corporate human rights strategy • Embedding preventive measures in their own business operations and vis-à-vis direct suppliers • Immediately taking corrective action in the event of identified violations of the law • Establishment of a complaints procedure in the event of legal violations • Documentation and reporting obligations for the fulfillment of due diligence obligations <p>Of relevance to labor law: New duty to provide information in the economic committee</p> <ul style="list-style-type: none"> • Pursuant to the newly inserted Sec. 106 (3) No. 5b BetrVG, economic matters within the meaning of this provision now also include issues relating to corporate due diligence in supply chains.

Employment Tracker

August 2021



YOUR BUSINESS LAW FIRM

Local presence: your contacts



Dr. Ulrich Fülbier

Head of labour and employment law

Prinzregentenstraße 22
80538 Munich
Tel. +49 89 3090667-62
ufuelbier@goerg.de



Dr. Thomas Bezani

Kennedyplatz 2
50679 Cologne
Tel. +49 221 33660-544
tbezani@goerg.de



Dr. Axel Dahms

Kantstraße 164
10623 Berlin
Tel. +49 30 884503-122
adahms@goerg.de



Burkhard Fabritius, MBA

Alter Wall 20 – 22
20457 Hamburg
Tel. +49 40 500360-755
bfabritius@goerg.de



Dr. Dirk Freihube

Ulmenstraße 30
60325 Frankfurt am Main
Tel. +49 69 170000-159
dfreihube@goerg.de



Dr. Ralf Hottgenroth

Kennedyplatz 2
50679 Cologne
Tel. +49 221 33660-504
rhottgenroth@goerg.de



Dr. Christoph J. Müller

Kennedyplatz 2
50679 Cologne
Tel. +49 221 33660-524
cmueller@goerg.de



Dr. Lars Nevian

Ulmenstraße 30
60325 Frankfurt am Main
Tel. +49 69 170000-210
lnevian@goerg.de



Dr. Marcus Richter

Kennedyplatz 2
50679 Cologne
Tel. +49 221 33660-534
mrichter@goerg.de



Dr. Frank Wilke

Kennedyplatz 2
50679 Cologne
Tel. +49 221 33660-508
fwilke@goerg.de