

## LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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# Lapse and limitation period of compensation for annual leave entitlement

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When an employment contract comes to an end employers must pay compensation for annual leave that has not been taken ([section 7 \(4\) Federal Annual Leave Act \(Bundesurlaubsgesetz, BUrlG\)](#)). Due to new case law on the obligation of employers to provide information as a prerequisite for the lapse of and limitation period for annual leave entitlement, employers are afraid that they will be exposed to claims for compensation for annual leave entitlement not taken for an unrestricted period of time after an employment contract comes to an end. However, the Federal Labour Court (Bundesarbeitsgericht, BAG) rejected the assertion of claims for compensation for annual leave entitlement not taken for an unrestricted period of time in two recent cases (*cf. BAG 31 January 2023 – 9 AZR 456/20, PM no. 5/23 and 31 January 2023 – 9 AZR 244/20, PM no. 6/23*).

### No lapse or limitation of annual leave entitlement without notification from the employer

In the last year, the BAG has followed the case law of the Court of Justice of the European Union (CJEU) on the lapse and limitation of annual leave entitlement. If the employer does not comply with their obligation to provide notice, an employee's annual leave entitlement does not

lapse upon expiry of the annual leave year and the three year limitation period does not commence. If employers wish to avoid annual leave entitlement accruing over several years, they must promptly and individually inform an employee of their specific annual leave entitlement, stating that otherwise the entitlement would lapse if the leave is not taken. More information can be found in our articles "[Court of Justice of the European Union: Annual leave entitlement no longer lapses automatically](#)" and "[Lapse and limitation of annual leave entitlement – the Federal Labour Court follows the case law of the Court of Justice of the European Union and dismisses both cases as the employer had not complied with their obligation to provide information and their notification obligation](#)".

### Limitation period for compensation for annual leave entitlement even without notice by the employer

The current decision of the BAG allows employers to breathe somewhat, at least with regard to compensation for annual leave entitlement. According to the BAG, the notification obligation regarding annual leave entitlement is not transferred over to compensation for annual leave

entitlement. Consequently, the three year limitation period will commence by the end of the calendar year in which the employment contract ended, regardless of whether the employer has fulfilled its notification obligation. The end of the employment contract is a break point. In contrast to annual leave entitlement, compensation for annual leave entitlement does not deal with an entitlement to garden leave, but is merely a financial entitlement to compensation. The structurally weak position of the employee from which the CJEU deduced the employee's vulnerability upon taking annual leave and therefore the employer's notification obligation ends with the end of the employment contract. Consequently, employers do not run the risk of compensation for more than three years of accumulated annual leave being claimed after the end of the year in which the employment contract was ended.

### Transfer to limitation periods under collective bargaining agreements

The BAG also transferred these thoughts to limitation periods under collective bargaining agreements. Due to the lack of vulnerability of

the employee with regard to claiming compensation for annual leave entitlement, the limitation period under collective bargaining agreements is likewise unaffected by the fulfilment of the employer's notification obligation. Even if the BAG had not expressed an opinion on agreed limitation periods in individual employment law, the BAG's thoughts are also able to be transferred to this due to comparable interests. It is therefore appropriate to safeguard the existence and effectiveness of limitation periods in employment law.

### Comments

If employers are faced with claims for compensation for annual leave entitlement not taken from employment contracts that have already ended, it should be carefully monitored to ascertain if these have not already lapsed or are time-barred, in which case the notification obligation remains to be fulfilled. In order to keep the scope of annual leave entitlement/promptly asserted claims for compensation for annual leave entitlement not taken as small as possible, employers are urgently advised to satisfy their notification obligations regarding the lapse of annual leave entitlement.

**Note**

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Pia Pracht on +49 221 33660-524 or by email to ppracht@goerg.de. For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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