GÖRG

YOUR BUSINESS LAW FIRM

Employment Tracker

JULY 2023

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.

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 practice
Federal Labour Court		
Consideration of Non-Cash Remuneration (Provision of a Company Car for Private Use) in the Seizure Exemption Limits	31.05.2023 - 5 AZR 273/22 -	**The pecuniary advantage for the private use of a company car for the journey from the home to the company does not constitute remuneration in kind and is therefore not to be taken into account when determining the attachable part of the income.** *The 5th Senate of the Federal Labour Court decided this.* Facts The parties are in dispute about the payment of differences in remuneration and, in this context, in particular about the question of whether the seizure exemption limits must also be observed when deducting pecuniary advantages from the remuneration. The plaintiff, who is married and obliged to support two children, is employed by the defendant. During the course of the employment relationship, the defendant provided him with a company car, also for private use, in lieu of a pay increase. In addition to the gross monthly salary, the plaintiff's remuneration statements show non-cash benefits for the use of the car and the mileage between home and work. From the sum of these three amounts, the defendant calculated the net pay after deducting taxes and social security contributions and, after further deducting the two non-cash benefits, the amount paid out. In his lawsuit, the plaintiff has demanded compensation differences in the net pay. He claimed that the payment of the remuneration, which in addition to money also included the

non-cash benefit of the private use of the car, did not comply with the garnishment limits resulting from three maintenance obligations.

The decision of the Federal Labour Court

The Federal Labour Court ruled that, for the purpose of calculating the seizable income within the meaning of Section 107 (2) sentence 5 of the code of civil procedure (ZPO), cash payments and payments in kind must be added together in accordance with Section 850e no. 3 sentence 1 ZPO. Benefits in kind include the provision of a company car for private use. The value amounts to 1% of the list price.

The pecuniary advantage for the use of the vehicle on the way from the home to the company in the amount of 0.03% of the list price per month for each distance kilometer does not constitute a payment in kind within the meaning of the provisions of enforcement law. This is not a benefit in kind within the meaning of Section 107 (2) sentence 5 GewO, but rather a tax-relevant adjustment item for the flat-rate deduction of income-related expenses. It was therefore not to be included in the calculation of the seizable income pursuant to Section 850e no. 3 sentence 1 ZPO.

Taxes and social security contributions are to be deducted from the amount to be assessed. From the seizable income determined in this way, the seizure limits were then to be determined in accordance with Section 850c of the Code of Civil Procedure and the relevant seizure exemption limit notices. Paragraph 6 of this provision, according to which income of the person entitled to maintenance (in this case the spouse) can be taken into account in whole or in part at equitable discretion, is to be applied accordingly.

Since the Regional Labour Court did not make any findings in this regard and the facts required for the calculation of taxes and social security contributions were not established, the matter was referred back to the Regional Labour Court for a new hearing and decision.

Deviation from the Equal Pay Principle for Temporary Employees by Collective Agreement	31.05.2023 - 5 AZR 143/19 -	**According to Section 8 (2) of the German Temporary Employment Act (AÜG), a collective agreement may deviate "downwards" from the principle that temporary workers are entitled to the same pay as comparable permanent employees of the hirer for the duration of the temporary employment ("equal pay"), with the result that the**

hirer only has to pay the temporary worker the lower collectively agreed remuneration. The Association of German Temporary Employment Agencies (iGZ) has concluded a collective agreement to this effect with the ver.di trade union. This satisfies the Union law requirements of Article 5 (3) of the Temporary Employment Directive.

The 5th Senate of the Federal Labour Court decided this.

Facts

The plaintiff was employed by the defendant as a part-time temporary employee on the basis of a fixed-term employment contract. From January to April 2017, she was mainly assigned to a retail company and most recently earned 9.23 euros gross/hour. She claimed that comparable regular employees received a gross hourly wage of 13.64 euros.

In her action, she therefore claimed differential pay for the period January to April 2017, invoking the principle of equality under the AÜG. She argued that the collective agreement of iGZ and ver.di applicable to her temporary employment relationship was not compatible with Article 5 (3) of the Temporary Employment Directive and the respect for the overall protection of temporary workers required therein.

The defendant filed a motion to dismiss the action and claimed that the collective agreement of iGZ and ver.di does not violate Union law.

The decision of the Federal Labour Court

The Federal Labour Court dismissed the action as unfounded. The plaintiff was not entitled to remuneration similar to that received by comparable permanent employees of the hirer.

Based on the collective agreement of iGZ and ver.di applicable to the temporary employment relationship, the defendant was only obligated to pay the collectively agreed remuneration pursuant to Section 8 (2) sentence 2 AÜG and the former Section 10 (4) sentence 1

AÜG. This collective agreement, at least in conjunction with the statutory protection provisions for temporary workers, satisfies the requirements of Article 5 (3) of the Temporary Employment Directive.

Assuming that the plaintiff's allegations regarding the remuneration of comparable permanent employees are true, the plaintiff did suffer a disadvantage because she received a lower remuneration than she would have received if she had been hired directly for the same job by the user company. However, Article 5 (3) of the Temporary Employment Directive expressly permits such a worse position, provided that this is done with "respect for the overall protection of temporary workers".

According to the requirements of the Court of Justice of the European Union, this requires that compensatory advantages make it possible to neutralize the unequal treatment. According to the case law of the European Court of Justice, a possible compensatory advantage could be the continued payment of wages even in periods without a temporary employment agency, both in the case of permanent and fixed-term temporary employment relationships.

The collective bargaining agreement of iGZ and ver.di guarantees the continued payment of the remuneration in periods without a temporary worker. In addition, the German legislator has ensured with Section 11 (4) sentence 2 AÜG for the area of temporary employment that the lender bears the economic and operational risk for non-lending periods without restriction, because the claim to default of acceptance remuneration in the temporary employment relationship cannot be waived in exceptional cases. The legislator has also ensured that the collectively agreed remuneration of temporary workers may not fall below the lower wage limits set by the state and the statutory minimum wage. In addition, since April 1, 2017, the deviation from the principle of equal pay pursuant to Section 8 (4) sentence 1 AÜG has been limited in principle to the first nine months of the temporary employment relationship.

Works council chairman as data protection officer?

06.06.2023

- 9 AZR 383/19 -

The activity as chairman of the works council typically precludes the performance of the duties of the data protection officer and generally entitles the employer to revoke the appointment of the data protection officer in accordance with the BDSG in the version valid until May 24, 2018.

The 9th Senate of the Federal Labour Court decided this.

Facts

The plaintiff, who is employed by the defendant, is chairman of the works council and is partially released from work in this function. In 2015, he was appointed data protection officer by the defendant and other subsidiaries located in Germany.

At the instigation of the Thuringian State Commissioner for Data Protection and Freedom of Information, the defendant and the other Group companies revoked the plaintiff's appointment with immediate effect at the end of 2017 due to an incompatibility of the offices. Following the entry into force of the General Data Protection Regulation (GDPR), they removed the plaintiff as data protection officer in mid-2018 as a precautionary measure.

The plaintiff has claimed that his legal status as the defendant's company data protection officer continues to exist unchanged.

The defendant took the view that conflicts of interest in the performance of the duties as data protection officer and works council chairman could not be ruled out. The incompatibility of the two offices constituted good cause for dismissing the plaintiff.

The decision of the Federal Labour Court

The defendant's appeal was successful before the Federal Labour Court.

The withdrawal of the appointment was justified for good cause. Such cause exists if the employee appointed as data protection officer does not possess or no longer possesses the expertise or reliability required to perform the task. Reliability may be in question if there is a risk of conflicts of interest. A conflict of interest relevant to dismissal is to be assumed if

		the data protection officer holds a position within an institution which has as its object the determination of the purposes and means of processing personal data. The tasks of a works council chairman and a data protection officer cannot typically be performed by the same person without a conflict of interest. Personal data may only be made available to the works council for purposes expressly provided for in the Works Constitution Act. The works council decides by committee resolution under which specific circumstances it will request which personal data from the employer in the exercise of its statutory duties and how it will subsequently process such data. Within this framework, it determines the purposes and means of processing personal data. The function of the chairman of the works council, who represents the works council within the framework of the resolutions passed, cancels out the reliability required to fulfil the tasks of a data protection officer.
Unequal treatment of part-time employees in the calculation of the company pension scheme	20.06.2023 - 3 AZR 221/22 -	**A company pension commitment may permissibly be based on the average monthly salary received in the last calendar year before retirement in order to calculate the company pension benefits and, in the case of part-time employment within the last ten years before retirement, modify this with a factor for the average scope of employment during this period.** *The 3rd Senate of the Federal Labour Court decided this.* Facts The parties disputed the amount of the plaintiff's company pension. In particular, it was questionable whether it is permissible to take into account only the average working time of the last 10 years when calculating the company pension. The plaintiff had initially been employed full-time by the defendant since 1984 and reduced her weekly working hours from 35 to 17.5 hours from 2005. In 2020, the employment relationship ended. The defendant grants its employees pension benefits. The relevant guideline provides for a calculation of the monthly company pension according to the formula "fixed pension amount x years of service". The factor used to calculate the fixed pension

amount is the average income earned in the last twelve months of employment. For employees who were employed part-time or full-time during the last ten relevant years of service, the following applies: The fixed pension amount changes in the ratio of the average working time of the employee during the last ten years of service to his or her working time during the calendar year prior to the occurrence of the insured event or early retirement. The defendant informed the plaintiff with regard to the calculation of her pension benefits that, according to the directive, only her employment status during the last ten eligible years of service is taken into account in the case of part-time employment.

In her action, the plaintiff seeks a declaration that the defendant is obligated to determine the fixed pension amount in the calculation of her company pension according to the ratio of the average working time during the entire relevant period of service to her working time in the last calendar year before her early retirement. On this basis, the plaintiff calculated a company pension entitlement of 155.19 euros per month. She took the view that if only the degree of employment in the last ten years were taken into account when calculating the fixed pension amount, the benefits for part-time employees would be disproportionately reduced. If this method of calculation is used as a basis, the result would only be an entitlement to a monthly company pension of 99.77 euros. By applying the ten-year rule, she is placed in the same position as if she had worked part-time throughout. This, in her opinion is an unjustified unequal treatment compared to full-time employees. Because the majority of the employees were still women, there was also unequal treatment on the basis of gender. The defendant, on the other hand, argued that there was no discrimination because the company pension was only reduced in proportion to the working hours. It was permissible to base the degree of employment on the last ten years.

The decision of the Federal Labour Court

The action was also unsuccessful before the Federal Labour Court.

Even in the case of part-time employees, a final-salary occupational pension commitment may be based on the last relevant salary, even if the occupational pension commitment also honours the length of service. In this respect, the final-salary occupational pension serves

		the legitimate purpose of maintaining the standard of living achieved in the last working life in retirement. In this context, it is not objectionable if the commitment is based on a period of ten years before retirement to determine the relevant average scope of employment of part-time employees. This does not put them at an unacceptable disadvantage.
Reimbursement of a commission paid to a personnel service provider for the placement of an employee upon termination of the employment relationship within the first 13 months of its existence	20.06.2023 - 1 AZR 265/22 -	**A provision in an employment contract according to which the employee must reimburse the employer for a commission paid by the employer to a third party for the conclusion of the employment contract if the employee terminates the employment relationship before the expiry of a certain period is unreasonably disadvantageous and invalid.** *The 3rd Senate of the Federal Labour Court decided this.* Facts The parties were in dispute about whether the plaintiff must reimburse the defendant for a commission paid to a personnel service provider for the mediation of the employment relationship. The plaintiff was employed as a service technician by the defendant. For the placement of the plaintiff, the defendant paid a placement commission to a third-party company. The employment contract contains, among other things, a provision according to which the plaintiff is obligated to reimburse the defendant for the commission paid if the employment relationship does not continue beyond June 30, 2022 and is terminated by the plaintiff himself, by the defendant or by mutual agreement for reasons for which the plaintiff is responsible. The plaintiff terminated the employment relationship as of June 30, 2021. The defendant retained part of the plaintiff's remaining remuneration and an invoiced meal allowance on account of the placement commission it had paid.

In this action, the plaintiff is demanding payment of the outstanding amounts from the defendant. The defendant has filed a counterclaim seeking reimbursement of the remaining provision amount as well.

The plaintiff is of the opinion that the provision in the employment contract regarding the reimbursement of the commission is invalid. The provision placed him at an unreasonable disadvantage because the risk of personnel recruitment costs incumbent on the company was thereby shifted excessively to him and he was also de facto prevented from giving notice of termination during the probationary period. The defendant, on the other hand, argued that the clause in the employment contract was effective. The mediation of the employment relationship by a third-party company was also in the interest of the plaintiff, who had made a conscious decision to do so. It had a legitimate interest in only finally paying the expenses incurred for the conclusion of the employment contract if the plaintiff worked for it for at least a certain, contractually agreed period. In addition, the risk is not passed on to the plaintiff in an undifferentiated manner, since he only has to reimburse the commission in the event of a termination of the employment relationship for which he is responsible. Finally, the amount to be reimbursed was also not disproportionately high in view of the plaintiff's relatively high monthly gross income.

The decision of the Federal Labour Court

The defendant was unsuccessful before the Federal Labour Court.

The provision in the employment contract unreasonably disadvantages the plaintiff and is therefore invalid.

The plaintiff's constitutionally guaranteed right to free choice of employment is impaired, without this being justified by the defendant's legitimate interests. In principle, the employer must bear the entrepreneurial risk that financial expenditures made by him for personnel recruitment are not "worthwhile" because the employee terminates his employment in a legally permissible manner.

		Therefore, there is no reasonable interest of the defendant to transfer such costs to the plaintiff. The plaintiff also receives no advantage that could compensate for the impairment of his freedom of job choice.
European Court of Justice		
Personnel secondment according to the collective agreement of the public service (TVöD) as temporary work within the meaning of the Temporary Employment Directive?	22.06.2023 - C-427/21 -	**The provision of personnel pursuant to the Collective Agreement for the Public Sector (TVöD) does not fall within the scope of the European Temporary Employment Directive.** *This has been decided by the European Court of Justice.* Facts Following a referral by the Federal Labour Court, the European Court of Justice had to decide whether a provision of personnel under the TVöD falls within the scope of the Temporary Employment Directive. The parties to the main proceedings dispute the plaintiff's obligation to perform his work on a permanent basis by way of provision of personnel at a third company after his area of responsibility has been transferred to the latter. The plaintiff in the main proceedings has been employed by the defendant since April 2000. The defendant operates a hospital whose sponsor is a corporation under public law. It does not have a permit to hire out employees. The TVöD in the version applicable to municipal employers applies to the employment relationship of the parties. In mid-2018, the defendant spun off various areas of responsibility, including the plaintiff's workplace, to a newly founded Service GmbH. The spin-off resulted in a transfer of parts of the business. The plaintiff objected to the transfer of his employment relationship to Service GmbH. However, since June 2018, at the request of the defendant, he has been performing his contractually owed work at this GmbH by way of provision of personnel pursuant to Section 4 (3) TVöD. His employment there is intended to be permanent. However, the employment relationship agreed between him and the defendant continues with the previous

content. Service GmbH only has the right to issue technical and organizational instructions to the plaintiff.

In his action, the plaintiff claimed that his employment with Service GmbH violated Union law. The provision of personnel is a permanent and therefore illegal transfer of employees under the Temporary Employment Directive.

The defendant, on the other hand, has argued that the provision of personnel is already not an inadmissible provision of personnel on the basis of the scope exception in Section 1 (3) No. 2b of the German Temporary Employment Act (AÜG).

The Federal Labour Court has therefore requested the European Court of Justice to answer two questions on the interpretation of Art. 1 (1) and (2) of the Temporary Employment Directive. According to the Federal Labour Court, the decision of the legal dispute depends on whether the provision of personnel according to Section 4 (3) TVöD falls within the scope of the Temporary Employment Directive. If this were the case, the decision would depend on whether the Temporary Employment Directive allows for an exception such as that regulated in Section 1 (3) No. 2b AÜG.

The decision of the European Court of Justice

The European Court of Justice has ruled that the Directive does not apply to situations such as that of personnel secondment according to the TVöD.

The European Court of Justice states that an employment relationship only falls within the scope of the Directive if an employer intends, both at the time of the conclusion of the employment contract in question and at the time of each of the assignments actually made, to place the employee in question temporarily at the disposal of a user undertaking.

In the case of the provision of personnel pursuant to the TVöD, the employee in question performs the work contractually owed to his employer with respect to a third party company and in this context is subject to its supervision and management within the meaning of Art. 1 (1) of the Directive. Nevertheless, the requirements for the existence of temporary work within the meaning of the Directive were not met in view of the fact that, in the case of a personnel secondment, the employee in question was originally hired to perform tasks of

his employer, since the employer did not intend, when concluding the employment contract, to place this employee at the disposal of a user undertaking. Moreover, this intention is lacking not only at the time of the conclusion of the contract, but also at the time of the transfer of the employee to the third-party company, if - as is the case here - the employment relationship with the employer continues to exist only because the employee exercised his right of objection with regard to the transfer of his employment relationship to the third-party company.

Accordingly, an employment relationship such as the one at issue could not fall within the scope of application of the Directive, since the defendant employer had no intention whatsoever to place the plaintiff in the exit procedure at the disposal of a user undertaking and, secondly, the provision in question was not temporary.

Also, the situation of the provision of personnel does not fall under the objectives pursued by the Directive of the flexibility of enterprises, the creation of new jobs or even the promotion of the access of temporary workers to permanent employment, since the employment relationship of the employee whose tasks were transferred continues.

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 practice
Federal Labour Court		
Crediting of granted vacation in dual employment relationship in the event of invalid notice of termination	25.07.2023 - 9 AZR 230/22 -	In dispute is whether the plaintiff must have the vacation granted to him by another employer during the legal dispute on protection against dismissal credited against his vacation claims against the old employer in corresponding application of Section 615 sentence 2 of the German Civil Code and Section 11 of the German Unfair Dismissal Act (KschG). The plaintiff was dismissed by the defendant without notice. The Labour Court upheld the employee's action against this termination and ruled that the termination was invalid. In 2021, the defendant terminated the employment relationship again. The employment relationship of the parties was therefore terminated before the end of May 2021. During the ongoing proceedings for protection against dismissal, the plaintiff had taken up a new employment relationship with another employer. This employer granted the plaintiff vacation in the amount of 25 working days in 2020 and 10 working days in 2021 until the date of termination of the employment relationship with the defendant. The plaintiff is of the opinion that she is entitled to compensation for vacation against the defendant. In particular, the vacation granted by the new employer can only be offset against the vacation claims against the defendant with regard to her statutory minimum vacation entitlement.

		The action for the granting of compensatory leave was unsuccessful before the Labour Court and the Regional Labour Court (judgment of May 2, 2022 - 15 Sa 885/21). The Regional Labour Court gave the decisive reason that the plaintiff's vacation claims against the defendant had been completely fulfilled by the vacation days granted by her new employer in 2020 and 2021. The employee would have to have the vacation granted to him by the other employer during the termination dispute offset against his vacation entitlement against the old employer if he could not have fulfilled the obligations under both employment relationships at the same time. The plaintiff contests this with her appeal.
Entitlement to part-time employment during parental leave	25.07.2023 - 9 AZR 329/22 -	The parties dispute part-time employment and the associated remuneration during parental leave. The plaintiff applied to the defendant employer for parental leave for his son and at the same time for part-time employment for this period pursuant to Section 15 (7) of the Federal Parental Allowance and Parental Leave Act (BEEG). Shortly before this application, a general works agreement on a reconciliation of interests and social plan was concluded at the defendant, according to which several areas of activity were to be eliminated. The employees affected by the measure through job loss – including the plaintiff – were designated by name. The defendant rejected the plaintiff's application for part-time work during parental leave, citing urgent operational reasons. The reason given was the partial relocation of the plaintiff's area of activity and the associated restructuring, for which reason the plaintiff's job would be eliminated without replacement. In his lawsuit, the plaintiff is seeking, among other things, employment during parental leave in the amount of 30 hours per week. He is of the opinion that the defendant has already rejected his application for parental leave in the letter of rejection in an inappropriate form. He also doubted that urgent operational reasons precluded his request for parental leave,

and in particular that there was no statutory presumption in this regard under Section 1 (5) of the German Unfair Dismissals Act (KSchG).

The Labour Court dismissed the claim for employment during parental leave, the Regional Labour Court (Berlin, judgment dated July 20, 2022 - 4 Sa 847) upheld it. The Regional Labour Court essentially states that the requirements for the reduction of working time during parental leave pursuant to Section 15 (7) BEEG are met. In particular, the presumption pursuant to Section 1 (5) of the German Unfair Dismissals Act (KSchG) for the existence of urgent operational reasons is not applicable.

The appeal of the defendant is directed against this.

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
Whistleblower Protection Act comes into force on July 02, 2023	02.06.2023	The Whistleblower Protection Act was promulgated in the Federal Law Gazette on June 02, 2023 and will therefore enter into force on July 02, 2023. ▪ The law regulates the handling of reports of fraud, corruption and other wrongdoing in companies and public authorities. ▪ The aim is to protect whistleblowers who draw attention to such abuses from the threat of discrimination and consequences under labour law by obliging them to set up suitable structures - such as internal and external reporting offices and measures to protect whistleblowers from reprisals. ▪ At the same time, it also contains provisions on liability, damages and fines in the event of deliberately false information.
Law for the promotion of an inclusive labour market promulgated	13.06.2023	The Act to Promote an Inclusive Labour Market was promulgated on June 13, 2023. The aim of the law is to get more people with disabilities into regular work, to keep more people with health impairments in work and to enable more targeted support for people with severe disabilities. Provisions of the law at a glance: ▪ Increase in the compensatory levy for employers who do not employ a single severely disabled person despite having a duty to do so; as before, special regulations are to apply to smaller employers. ▪ Concentration of the funds of the equalization levy on the promotion of employment in the general labour market. ▪ Fictitious approval for entitlement payments by the integration office

		▪ Higher wage cost subsidies by lifting the cap on wage cost subsidies in the budget for work.
EU Parliament passes "AI-Act	14.06.2023	The EU Parliament passed a draft bill for a regulation on artificial intelligence (AI-Act) on June 14, 2023. The draft must now go through the further legislative process. The following provisions of the bill are particularly relevant to employers: ▪ Some AI systems that are already used in HR practice, such as AI-powered recruiting systems, are classified as "high-risk AI"." ▪ As a result, the data used to train the AI must be selected to prevent discrimination. ▪ Employers must pay attention to system security and conduct a risk analysis before using the system. In addition, the draft provides for documentation and monitoring obligations.
Law on the further development of skilled labour immigration passed by the german parliament	23.06.2023	On June 23, 2023, the German Bundestag passed the Act on the Further Development of Skilled Labour Immigration. In this way, the German government aims to meet the challenges for securing skilled workers and the labour market in Germany. In the future, skilled labour immigration is to rest on three pillars: the skilled labour pillar, the experience pillar and the potential pillar. **I. Skilled labour pillar** The skilled labour pillar remains the central element of immigration. As before, it includes the EU Blue Card for foreign university graduates and the national residence permit for foreign skilled workers with a German degree or a degree recognized in Germany (university graduates or those with vocational qualifications). **1. Major changes to the residence permit for skilled workers (§§ 18a, 18b AufenthG)** ▪ The granting of a residence permit for skilled workers is no longer at the discretion of the authorities. Under the new law, the residence permit will be issued if the conditions for issuance are met.

- For the issuance of the residence permit, it is no longer necessary that the acquired education qualifies for the qualified employment. Rather, any qualified employment is sufficient, regardless of the underlying training.
- Enabling a "change of track": Asylum seekers who entered the country before March 29, 2023, and who, among other things, have a corresponding qualification and a job offer or are already in a corresponding employment relationship, can terminate their asylum procedure by withdrawing their application and apply for a residence permit as a skilled worker without having to leave the country and go through a visa procedure beforehand.
- Enabling parents and parents-in-law to join professionals who are entitled to reside in Germany.

2. Significant changes to the EU Blue Card (§ 18g AufenthG nF)

- The minimum salary threshold for the issuance of the EU Blue Card for regular professions is lowered to 50 percent of the annual contribution assessment ceiling in the general pension insurance; for so-called bottleneck professions to 45.3 percent.
- The occupational groups covered by the bottleneck occupations have been expanded.
- The salary threshold of 45.3% no longer applies only to bottleneck professions, but also in the case that the university degree was acquired no more than three years before the application for the EU Blue Card.
- For IT specialists, a university degree is no longer required to obtain the EU Blue Card.
- In the case of a change of job, the consent of the foreigners authority is no longer required.

II. Experience pillar

The experience pillar focuses on work experience. This allows immigrants who have at least two years of work experience and a vocational qualification recognized by the state in their country of origin. However, a salary threshold must be met and the employer must be bound by collective agreements. In future, the professional qualification no longer has to be recognized in Germany. In future, anyone wishing to have their professional qualification recognized in Germany will be able to do so only after entering Germany. To do so, skilled workers and employers must commit to a recognition partnership.

III. Potential pillar

		The third pillar focuses on people's potential. A so-called opportunity card (§§ 20a, 20b AufenthG nF) is newly introduced. The opportunity card is a residence permit to search for gainful employment or for measures to recognize foreign professional qualifications. ▪ In addition to other requirements defined in more detail in § 20a AufenthG, the opportunity card can be issued if the foreigner is a skilled worker or if a sufficient number of points is achieved according to a point system. ▪ The selection criteria of the point system include qualifications, German and English language skills, professional experience, connection to Germany, age and the potential of the accompanying spouse or partner. ▪ The opportunity card is issued for a period of up to one year and can be extended to up to two years under certain conditions. ▪ The opportunity card entitles the holder to work an average of no more than 20 hours per week and a trial job for no more than two weeks at a time.
Increase of the minimum wage decided	26.06.2023	The Minimum Wage Commission decided on 26 June 2023 that the minimum wage should increase from the current €12 to €12.41 from January 2024. A further increase to 12.82 € is planned from January 2025

Local presence: your contacts

Dr. Ulrich Fülbier

Head of labour and employment law
Prinzregentenstrasse 22
80538 Munich
P: +49 89 3090667 62
ufuelbier@goerg.de

Dr. Thomas Bezani

Kennedyplatz 2
50679 Cologne
P: +49 221 33660 544
tbezani@goerg.de

Dr. Axel Dahms

Kantstrasse 164
10623 Berlin
P: +49 30 884503 122
adahms@goerg.de

Burkhard Fabritius, MBA

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

Dr. Dirk Freihube

Ulmenstrasse 30
60325 Frankfurt am Main
P: +49 69 170000 159
dfreihube@goerg.de

Dr. Ralf Hottgenroth

Kennedyplatz 2
50679 Cologne
P: +49 221 33660 504
rhottgenroth@goerg.de

Dr. Martin Hörtz

Ulmenstrasse 30
60325 Frankfurt am Main
P: +49 69 170000 165
mhoertz@goerg.de

Dr. Alexander Insam, M.A.

Ulmenstrasse 30
60325 Frankfurt am Main
P: +49 69 170000 160
ainsam@goerg.de

Dr. Christoph J. Müller

Kennedyplatz 2
50679 Cologne
P: +49 221 33660 524
cmueller@goerg.de

Dr. Lars Nevian

Ulmenstrasse 30
60325 Frankfurt am Main
P: +49 69 170000 210
lnevian@goerg.de

Dr. Marcus Richter

Kennedyplatz 2
50679 Cologne
P: +49 221 33660 534
mrichter@goerg.de

Dr. Frank Wilke

Kennedyplatz 2
50679 Cologne
P: +49 221 33660 508
fwilke@goerg.de

GÖRG

YOUR BUSINESS LAW FIRM

Never Far Away – Our Offices

BERLIN
T: +49 30 884503-0
berlin@goerg.de

HAMBURG
T: +49 40 500360-0
hamburg@goerg.de

FRANKFURT AM MAIN
T: +49 69 170000-17
frankfurt@goerg.de

COLOGNE
T: +49 221 33660-0
koeln@goerg.de

MUNICH
T: +49 89 3090667-0
muenchen@goerg.de