

IN BRIEF: NEW JUDGMENTS IN THE AREA OF ANTI-DISCRIMINATION LAW

COMMENTS In the last issue of our Newsletter, we mentioned two recent decisions of the Federal Labor Court that concerned the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG). In the meantime, two further decisions have been forthcoming in this area. These decisions clearly show that the Federal Labor Court does not hastily assume the existence of discrimination and, instead, consistently makes an effort to thoroughly weigh the circumstances in the individual case.

1. Dismissal may be warranted if an employee is not able to read instructions in the German language. According to Section 3(2) of the General Equal Treatment Act, this does not constitute indirect discrimination on the basis of ethnic origin, which is prohibited. This holds in any case if a knowledge of German is required to perform the duties entailed by employment and the employee has been given an opportunity to acquire a knowledge of the language (Federal Labor Court, judgment of 28 January 2010, – 2 AZR 764/08 –).
2. If an employer excludes older employees from a pool of employees whom he offers a severance agreement with severance benefits in connection with a workforce reduction, this does not constitute discrimination on the basis of age. The court has already ruled that this does not involve discrimination within the meaning of Section 3(1) of the General Equal Treatment Act since older employees did retain their jobs. They were therefore not treated less favorably than younger employees. The Court also rejected the possibility of a claim under the aspect of equal treatment (Federal Labor Court, judgment of 25 February 2010, – 6 AZR 911/08 –).

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