

Occupational Integration Management (*Betriebliches Eingliederungsmanagement – BEM*) – Notification of Employees

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Decision

Occupational integration management pursuant to § 84(2) of Social Code IX (Sozialgesetzbuch IX) becomes very important in the case of employees who are ill over a lengthy period or time. In our Legal Update of May 2015, we have already drawn attention to a new decision concerning consultation of legal counsel. In the meantime, a further decision of the Federal Labor Court has appeared that concerns occupational integration management. This decision is of enormous importance for practitioners since it addresses the requirements to be met when inviting an employee to participate in an occupational integration management program.

Headnote

It is up to the respective employer to take the initiative when occupational integration management seems to be advisable. The employer must comply with formal requirements when providing an employee with information on occupational integration management. That entails providing information on the goals of occupational integration management and the nature and the scope of the data collected and used for such purposes (judgment of 20 November 2014, 2 AZR 755/13).

Implications for Practice

Whenever dismissal of an employee is contemplated because of illness, formulation of the reasons for dismissal can represent a daunting challenge. The courts will consistently want to determine whether the dismissal is reasonable, and this will regularly presuppose completion of occupational integration management. Otherwise, dismissal is possible only under exceptional circumstances (for example, if it is obvious that occupational disability will be permanent). In actual prac-

tice, it will seldom be possible to demonstrate that this is indeed the case. That makes it all the more important to be able to show that adequate occupational integration measures have been carried out or – if the employee refuses to participate – at least a serious attempt was made to do so. The first step here is to inform the employee of the goals of the program. However, it is not sufficient to simply repeat the content of the law. It is also necessary to point out that sensitive personally identifiable information will be used, in particular medical data (§ 3(9) of the Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG)). As a result, it is by no means sufficient to casually tell an employee that he or she must appear for the purposes of occupational integration management. It is advisable to provide such information in writing and obtain acknowledgment of receipt. The following formulation is likely to suffice:

“[...] Working together with you, the Works Council, the Disabled Staff Representative, the Integration Office and the company physician, we would like to take advantage of occupational integration management to determine how your occupational disability can be overcome and what services or assistance would make it possible to avoid a recurrence and, among other things, enable you to continue employment with us. Our priority goal is your continued employment with us. Occupational integration management is open-ended, which means you can actively contribute your input and suggestions. In the course of the program, we would like to discuss the health-related issues that resulted in your absence in the past. In addition, we would like to partner with you to ascertain what possibilities exist to alleviate your health problems. Please take note of the fact that personally identifiable information within the meaning of § 3(9) of the Federal Data Protection Act will be recorded and stored. In the context of occupational integration management, this will

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involve your health history. This information shows the periods during which you were unable to work.

Finally, we would like to point out that participation in occupational integration management is voluntary. [...]"

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 Jens Völksen on +49 221 33660-503 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

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