

Legal Update

Labor Law

Advertising with ex-employees is permissible

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Decision

The Federal Labor Court decided on 19 February 2015 that employers are entitled to use advertisements showing former employees even after their employment has terminated. Where the employee has consented to appearing in a promotional film for the employer during the term of his employment, this consent will, as a rule, remain in force even after the employment relationship has terminated. The employer is thus entitled to continue using the promotional film. The employee is only entitled to revoke his consent where he has a justified interest in doing so (*Federal Labor Court, judgment of 19 February 2015, file reference 8 AZR 1011/13*).

Relevance in legal practice

Good news for employers! The production of marketing and promotional films can be a costly business if the services of a professional advertising agency are used. As a result, it would be most unfortunate for an employer if, just after completion of a brand-new promotional film, the employer could no longer use it because the employee had left the company. This is particularly true nowadays when employee fluctuation is higher. In

principle, employees can rely on the right to the protection of their own image guaranteed under the Basic Law. The requirement of consent to the publication of images derives basically from § 22 of the Art Copyright Act (*Kunsturhebergesetz – KUG*). Nonetheless, in the opinion of the Federal Labor Court, once consent has been granted, it may only be revoked if the employee has a justified interest in this. In the court's view, the employee has no right to not be associated with his former employer after the termination of the employment relationship. In addition, no distinction should be made as to whether the employee consented in his capacity as an employee or as a private individual. Thus employees cannot assume, when they grant their consent, that the publication will terminate after their employment relationship terminates.

The Federal Labor Court's decision shows how important it is to obtain the employee's consent to publication when making a promotional film or otherwise publishing pictures of employees. Failure to do so can result in the employee blocking publication or possibly even claiming damages from the employer for unauthorized publication.

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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.

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