

## Clever circumvention of the minimum wage?

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**Decision:** On 4 March, the Berlin Labor Court handed down one of the first decisions on the minimum statutory wage which has been in force since 1 January 2015. According to the decision, employers are not permitted to deduct additional holiday pay or a special annual bonus from the minimum statutory wage. Termination of employment with an offer of re-employment on new terms, which is aimed at achieving such a deduction, is invalid. The employee was employed for a base salary of EUR 6.44 per hour and received a performance bonus and extra payment for working shifts; in addition, she received holiday pay and, after a certain period of service, a staggered annual bonus. The employer terminated the employment relationship and offered at the same time to re-employ the employee at an hourly rate of EUR 8.50 without any performance bonus, additional holiday pay, or a special annual bonus (*Berlin Labor Court judgment of 4 March 2015, file reference 54 Ca 14420/14*).

**Relevance in legal practice:** The minimum statutory wage has been in force nationwide since 1 January 2015. Both employers as well as labor courts are now gathering their initial experience with this new legal

institution. So far a variety of unresolved issues have been identified in connection with the minimum statutory wage, which require clarification from the courts. The Berlin Labor Court's decision does, however, appear to clamp down on what initially appears to be quite a clever attempt to circumvent the statutory minimum wage. Even if the method used by the employer in the case decided by the court, i.e. a termination of employment with an offer of re-employment on new terms, accompanied by the disappearance/deduction of previously granted special payments appears attractive, this supposedly clever way of circumventing the minimum statutory wage is impermissible. The purpose of the minimum wage is to directly remunerate the employee for the work that he performs. However, special payments, such as holiday pay or Christmas bonuses do not serve this purpose. Accordingly, the deduction of those kinds of special benefits – even indirectly through termination of employment with an offer of re-employment on new terms – is impermissible. Consequently, the purpose of a special payment will determine whether it can be permissibly deducted from the minimum wage.

# Legal Update

## 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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