

Legal Update

Labor Law

Is covert observation of employees always illegal?

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Decision

On 19 February 2015, the Federal Labor Court addressed the question as to whether video recordings made of an employee on sick leave by a private detective hired by the employee's employer were illegal. The same employee had previously already won an action before the labor court against dismissal for reasons lying in her conduct; At issue in the present case was only the question as to whether the employer was liable for damages for pain and suffering as a result of the video recordings. Following publication of the press release of the Federal Labor Court, various sources reported that covert observation of employees would no longer be permissible. It was rumored that employers could no longer use private detectives to investigate "suspicions" of misconduct on the part of employees.

Relevance in legal practice

The use of private detectives to observe employees is still permissible after the Federal Labor Court's judgment. The Eighth Senate of the Federal Labor Court had simply criticized the fact that the employer had no reason to involve a private detective in the present case.

The employee had submitted a total of six medical certificates from two different physicians. Nothing other than that had occurred. There was, as a result, nothing to indicate that the employee was feigning illness. In such cases, employers may, according to the Federal Labor Court, neither have employees observed by private detectives nor may they have film and video recordings made. That means that circumstances must therefore be present that undermine the credibility of a medical certificate, for example, if an employee is not allowed to take paid annual leave when planned and then claims illness at precisely the time the employee originally wanted to take time off. It will still be possible to use the services of private detectives in any such cases, but it will be necessary to ensure that no video recordings are made; it is possible to determine whether an employee is actually ill or not through simple observation. There is no necessity for video recordings. The decisive factor will therefore consistently be the existence of suspicion that illness is only feigned. The same principles will also apply in other cases involving the use of private detectives, for example, to determine whether an employee is stealing from an employer. Suspicions must be grounded in objective fact.

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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 Dr. Christoph J. Müller on +49 221 33660-524 or by email to cmueller@goerg.de. For further information about the author visit our website www.goerg.com.

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