

## New Developments as Regards Notification of Mass Redundancies

Dr. Heiko Reiter

Frankfurt a.M., 22.12.2016

§ 17 of the Protection against Dismissal Act (*Kündigungsschutzgesetz – KSchG*) requires that employers submit what is referred to as ‘notification of mass redundancy’ whenever the number of the employees to be dismissed exceeds certain limits that are defined as a function of the size of the company’s workforce. The complicated process involved in notification of mass redundancy includes various checks, primarily in the form of procedural formalities, for example, as regards consultation of the works council or with respect to the content of the information to be submitted to the Federal Employment Agency (*Bundesagentur für Arbeit*).

In its order of 8 June 2016 – 1 BvR 3634/13 – the Federal Constitutional Court addressed the question as to whether employees on parental leave must also be taken into account for the purposes of issuance of notification of mass redundancy even if they cannot be dismissed within the applicable 30-day period (§ 17(1) of the Protection against Dismissal Act).

This court’s decision was made against the background of the fact that employees on parental leave enjoy special protection against dismissal pursuant to § 18 of the Federal Parent Allowance and Parental Leave Act (*Bundeselterngeld- und Elternzeitgesetz – BEEG*) and can be dismissed only with the consent of the responsible governmental authority. Since it generally takes a certain amount of time to obtain such consent, it can regularly be assumed in such cases that no dismissals of such employees will take place within the relevant 30-day period along with the dismissals of the other employees. In practice, that meant that employees on parental leave were in the past not counted for the purposes of notification of mass redundancy.

The Federal Constitutional Court has now decided that failure to take employees on parental leave into account

represented a violation of Art. 3(1) of the Basic Law and Art. 3(3) sent. 1 of the Basic Law; failure to take such employees into account is therefore unconstitutional. The reason for this is that the vast majority of individuals who avail themselves of the possibility of parental leave are still women, and failure to take them into account would entail disadvantages for them without justification.

### Recommended Course of Action:

In the case of notification of mass redundancy in the future, employers are urgently advised to take into account employees who cannot be dismissed during the 30-day period because consent of the authorities required as a result of special protection against dismissal has not yet been received. This applies not only in the case of employees who enjoy special protection against dismissal pursuant to § 18 of the Federal Parent Allowance and Parental Leave Act, but – independently of this decision of the Federal Constitutional Court – also in the case of all groups of persons who enjoy special protection against dismissal by virtue of any factor covered by Art. 3(3) sent.1 of the Basic Law. These would include in particular the severely handicapped (§ 85 of Social Code IX), persons with similar status (§§ 68(3) and 85 of Social Code IX) and pregnant women (§ 9 of the Maternity Protection Act (*Mutterschutzgesetz – MuSchG*)).

There are also other groups of persons who cannot be dismissed within the 30-day period due to the necessity of obtaining the prior consent of the authorities (for example, § 5 of the Nursing Care Leave Act (*Pflegezeitgesetz – PflegeZG*) and § 2(3) of the Family Care Leave Act (*Familienpflegezeitgesetz – FPfZG*), and no decision has as yet been forthcoming as to whether such persons

# Legal Update

must be taken into account in connection with notification of mass redundancy.

## 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. Heiko Reiter on +49 69 170000-220 or by email to [hreiter@goerg.de](mailto:hreiter@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

## Our offices

GÖRG Partnerschaft von Rechtsanwälten mbB

### BERLIN

Klingelhöferstraße 5, 10785 Berlin  
Phone +49 30 884503-0, Fax +49 30 882715-0

### COLOGNE

Kennedyplatz 2, 50679 Köln  
Phone +49 221 33660-0, Fax +49 221 33660-80

### ESSEN

Alfredstraße 220, 45131 Essen  
Phone +49 201 38444-0, Fax +49 201 38444-20

### FRANKFURT AM MAIN

Neue Mainzer Straße 69 – 75, 60311 Frankfurt am Main  
Phone +49 69 170000-17, Fax +49 69 170000-27

### HAMBURG

Dammtorstraße 12, 20354 Hamburg  
Phone +49 40 500360-0, Fax +49 40 500360-99

### MUNICH

Prinzregentenstraße 22, 80538 München  
Phone +49 89 3090667-0, Fax +49 89 3090667-90