

VW's Dispute with Suppliers – Is Volkswagen Entitled to Compensation for Short-Time Work to Bridge Production Stoppages?

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Various voices in the media have expressed doubts as to whether Volkswagen is entitled to apply for short-time work allowances due to production shutdowns resulting from disputes with its suppliers. This criticism is based on the fact that public funds may not be used to compensate for the economic impact of production stoppages caused by internal factors. Against this background, it is worthwhile to take a look at the legal requirements for receiving short-time work allowances.

Short-Time Work and Requirements

Short-time work is used to bridge temporary operational shutdowns and avoid redundancies. If all requirements have been fulfilled, employers can then reduce the number of regular working hours for a specific period, and part of the resulting wage shortfall of the employees is made up for by compensation from the Federal Employment Agency (*Bundesagentur für Arbeit*) with funds from unemployment insurance. This reduces the personnel expense of employers. Companies in certain sectors also receive short-time work allowances to compensate for the seasonal effects of the weather or as transfer payments in the case of structural changes.

Labour law does not allow employers to opt for short-time work unilaterally. Working hours of employees are regularly specified either in their individual employment contracts or in a relevant collective agreement. As a result, short-time work comes into question only if agreed to in the respective employment contract or collective agreement or if the employer has entered into a works agreement to that effect with a works council.

The decisive criteria at play here fall under social legislation; in particular, the situation must involve a significant work stoppage that is caused by unavoidable economic factors or an unavoidable occurrence.

Applicants may invoke economic reasons if a work stoppage is a result of the general economic situation, i.e., if it was triggered primarily by external economic events. On the other hand, company-specific economic causes such as management errors do not qualify for consideration.

An unavoidable event is defined as an occurrence that appears suddenly, is limited in time and could not have been avoided by the employer even if he had exercised extreme caution under the respective circumstances. The question arises here as to what precautionary measures a company can still be reasonably expected to take without shifting the burden of operational and economic risks to society in general. The law cites as examples unusual weather or regulatory decisions beyond the control of the company.

The principal criterion is ultimately inevitability; the idea behind short-time work allowances is not to give a company an unfair advantage over its competition. As a result, the company must take all reasonable measures that could prevent the work stoppage and therefore short-time work. Such measures could, for example, include a switch to different suppliers or raw materials or greater use of third-party borrowing.

Conclusions

It is unlikely that VW has met the legal requirements for receiving short-time work allowances since disruptions of contractual relationships with suppliers cannot qualify as either economic reasons or as an unavoidable occurrence. It is also hard to imagine that the production outage could be considered inevitable since the dispute could have been resolved. Ultimately, there is much to indicate that the legal requirements for short-time work allowances have not been met.

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 Lena Jordan on +49 221 33660-544 or by email to ljordan@goerg.de. For further information about the author visit our website www.goerg.com.

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