

## New Developments Regarding the Minimum Wage

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A uniform minimum wage of € 8.50 per hour has been in effect throughout Germany since 1 January 2015. Valuation of different components of compensation represents one of the central problems involved in connection with the minimum wage. In principle, it can be assumed that compensation components can be offset against one another only if they are functionally equivalent, i.e., if they relate directly to the work covered by the minimum wage. This may apply in the case of fringe benefits and bonuses, etc., but not, for example, to capital-forming benefits. Two decisions are presented below that address other basic issues related to the minimum wage.

### Decision

The judgment of the Berlin-Brandenburg Higher Labor Court of 2 October 2015 (9 Sa 570/15 and elsewhere) dealt with a case involving dismissal with an offer of reengagement in which an employer wanted to cease paying vacation money and Christmas bonuses due to the increase in hourly wages called for by the Minimum Wage Act (Mindestlohngesetz – MiLoG).

In its decision, which has up to now been issued only in the form of a press release, the Berlin-Brandenburg Higher Labor Court, ruled that dismissal with an offer of reengagement was invalid in this case. The court proceeded from the assumption that neither vacation money nor special payments, which in the present case were based upon the length of service of the employee affected, was intended as payment for the performance of work in the narrower sense, but were both additional benefits that were independent of the wages paid. In such cases, the court ruled, the general conditions for a dismissal accompanied by an offer of reengagement for the purposes of reducing compensation would have to

apply but were most likely not fulfilled in the present case.

### Implications for practice

Employers are advised to exercise caution in the case of any dismissal coupled with an offer of reengagement for the purposes of adjusting compensation due to the introduction of the minimum wage. Dismissal with an offer of reengagement for the purposes of achieving a reduction in remuneration is possible only under very stringent conditions that are in practice virtually never fulfilled. Since the grounds for the decision are not available, it is not yet possible to determine conclusively whether the opposite conclusion can be drawn from the present judgment of the Berlin-Brandenburg Higher Labor Court, i.e., that dismissal with an offer of reengagement is possible under less stringent conditions in exceptional cases if the only components of compensation that are eliminated are components that directly related to the minimum wage.

### Decision

In its judgment of 24 June 2015 (2 Sa 56/15), the Saxony Higher Labor Court found that dismissal on the basis of refusal to accept a change in an employment contract is in violation of the prohibition of retaliation contained in § 612a of the German Civil Code and therefore invalid. The court reasoned that the offer of a new contract was in violation of the Minimum Wage Act. The new offer made by the defendant called for payment of wages based on the minimum legal wage, but at the same time contained a clause stipulating that the basic salary covered a flat ten hours of overtime per month. The Saxony Higher Labor Court was of the opinion that the clause calling for a flat amount of overtime undercut the

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minimum wage and that the offer of a new contract was therefore in violation of the Minimum Wage Act.

## Implications for practice

The implications of the decision of the Saxony Higher Labor Court could be explosive. Clauses that call for flat remuneration for overtime may – in compliance with the principles developed in the case law – be validly agreed

and are common practice. However, employers are advised, especially in the case of employment relationships based on wages that do not or barely exceed the minimum wage, to carefully determine whether the amount of overtime required on a flat rate basis causes wages to drop below the legal minimum wage. If this should be the case, the employer could be confronted with claims for retrospective payment by the employee.

## 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).

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