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PREFACE

In our last Newsletter for 2016, we address the Flexi-Pension Act, which will take effect on 1 January 2017. In addition, the issue of whether the decision handed down by the Federal Labor Court on the minimum wage in the nursing sector can be applied to the Minimum Wage Act is discussed under "Limitation Periods and the Minimum Wage".

We also consider a decision on whether bonuses and overtime payments count towards the minimum wage. Another contribution examines VW's recent highly publicized dispute with its suppliers and the issue of whether the prerequisites for the payment of short-time work allowances were met.

Employment during Retirement – New "Flexi-Pension"

On 21 October 2016, the Bundestag adopted legislation intended to make the transition from employment to retirement more flexible (Flexi-Pension Act (Flexirentengesetz)), part of which will take effect on 1 January and part on 1 July 2017.

Previous legal situation

Three possible constellations are generally involved when employees continue to work while retired: employment after premature retirement, employment after retirement at the normal age of retirement and late retirement. In the case of premature retirement, retirees have up to now been allowed to earn an additional EUR 450 per month. Any earnings in excess of that amount result in a gradual reduction of pension benefits. On the other hand, there is no limit to the amount employees who retire at the normal age can earn.

In addition, employees who retire at normal retirement age and continue to work while receiving pension benefits no longer have to pay the employee contributions to unemployment and retirement insurance; their employers do, however, continue to pay the normal employer share, but this does not entail any increase in retirement benefits.

The reason why employers have to continue to pay into the system in such cases is based on governmental labor policy; the government wants to avoid making it more economical for employers to hire pensioners instead of younger employees. Employees who continue to work after retirement also have the possibility of postponing payment of their pensions. In those cases, further payment into the system results in an increase in retirement benefits of 0.5 percent per month. In such cases, employees are also released from the obligation to contribute to the unemployment insurance system.

"Flexi-Pension" legislation

The Flexi-Pension Act also simplifies the rules governing additional income. As of 1 July 2017, retirees who draw pension benefits before reaching official retirement age will be allowed to earn up to EUR 6,300 per year without deductions, while 40 percent of anything in excess of that amount will be deducted from their pensions. Where the additional earnings and the reduced pension still add up to an amount in excess of a retiree's previous income, these excess earnings will be deducted in full from any remaining pension benefits which are still due after deduction of the aforementioned 40 percent.

Pensions of employees who retire before they reach official retirement age are to be reduced by 0.3 percent for each month prior to official retirement age. However, retirees can compensate for (part of) this reduction by making a special payment into the system. As of 1 July 2017, the Flexi-Pension Act will enable employees to retire at the age of 50 (previously at the age of 55 years) by making such compensatory payments.

As of 1 January 2017, employees who receive pension benefits while still employed will have the option of continuing to pay into the retirement insurance system once they reach official retirement age by notifying their employees accordingly. Payment of such contributions by the employee and those of the employer will result in

an annual increase in retirement benefits. In such cases, employers will also no longer contribute to the unemployment insurance system.

Conclusions

Employers will be encouraged to employ retirees since they will no longer have to pay the employer contributions to the unemployment insurance system. At the same time, the possibility of being able to obtain higher retirement benefits will also encourage older employees to continue to work and continue to pay into the retirement insurance system after they reach official retirement age. It remains to be seen, however, whether the new "Flexi-Pension" will actually have the desired effect.

Pia Pracht

Limitation Periods and the Minimum Wage

In a recently published decision (Ref. 5 AZR 703/15), the Federal Labor Court questioned the validity of limitation periods and limitation clauses in employment contracts in connection with the minimum wage in the nursing sector.

Decision

In its decision of 24 August 2016 (Ref. 5 AZR 703/15), the Federal Labor Court addressed the validity of a limitation period in an employment contract from the nursing sector.

The underlying case involved a dispute over a limitation period in an employment contract with a typical formulation that made provision for the extinguishable of all claims between the parties not brought in writing within the three months following the respective dates of accrual.

The Federal Labor Court considered this limitation clause invalid, reasoning that by virtue of its all-encompassing formulation the limitation would also have to be construed to refer to the right to receive the minimum wage pursuant to the Nursing Care Conditions Regulation (Pflegearbeitsbedingungen-verordnung – PflegeArbbV). According to § 9 sent. 3 of the Posted Workers Act (Arbeitnehmer-Entsende-gesetz – AEntG), however, the minimum wage can be waived only under a generally applicable collective agreement or in a 'minimum wage regulation'. Accordingly, any waiver of such right in an employment contract would not be permissible.

The Federal Labor Court therefore considered the limitation clause, which covered all rights of the parties, to be in violation of the transparency requirement contained in § 307(1) sent. 2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB); the exhaustive formulation of the limitation clause conveys the erroneous impression that it is also possible to waive the right to receive the minimum wage mandated under the Nursing Care Conditions Regulation in an employment contract. However, the court found that this would not be consistent with § 9 sent. 3 of the Posted Workers Act, which prohibits limitation periods in connection with claims arising from § 2 of the Nursing Care Conditions Regulation in employment contracts.

As a result, the Federal Labor Court ruled that the entire limitation clause was invalid and rejected the possibility of enforcement of the clause in respect of other claims.

Implications for practice

The decision directly concerned only the minimum wage called for in the Nursing Care Conditions Regulation. At the practical level, the question then arises as to whether the decision also applies to the right to the minimum under the Minimum Wage Act (Mindestlohngesetz – MiLoG), which would mean that limitation clauses are consistently invalid unless provision is expressly made for an exception in the case of the right to receive a minimum wage under the Minimum Wage Act.

The grounds for the decision do, however, make it clear that the decision cannot be applied to the general minimum wage pursuant to the Minimum Wage Act.

The Federal Labor Court explicitly makes a distinction between the minimum wage in the nursing sector (§ 9 sent. 3 of the Posted Workers Act, § 2 of the Nursing Care Conditions Regulation) and the general minimum wage in effect otherwise (§ 3 sent. 1 of the Minimum Wage Act).

The way § 3 sent. 1 of the Minimum Wage Act is worded speaks against complete invalidly of limitation clauses. According to this provision, agreements that exclude the minimum wage called for under the Minimum Wage Act are invalid, but only in respect of that specific aspect. This makes it clear that the legislative deliberately wanted to avoid the rejection of limitation clauses in their entirety, but only any part thereof that concerned the right to receive the minimum wage.

The Federal Labor Court also makes mention of this and emphasizes in an obiter dictum that the prevailing opinion in the literature advocates construction of limitation clauses in employment agreements to ignore the invalid component and retain the remainder due to the way the word 'insofar' is used in § 3 sent. 1 of the Minimum Wage Act.

The decision of the Federal Labor Court is therefore not generally applicable; it can be applied only insofar as § 9 sent. 3 of the Posted Workers Act applies, i.e., exclusively within the sphere of operation of the Posted Workers Act and in sectors subject to regulations pursuant to the Posted Workers Act (e. g., construction, roofing and painting trades, security services, waste industry, hairdressers).

It is therefore recommended that employers in the nursing sector and sectors covered by the Posted Workers Act revise limitation clauses and time bars in their employment contracts and expressly waive application to claims to payment of the minimum wage.

Dr. Josef Toma

New Developments as Regards Notification of Mass Redundancies

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

Dr. Heiko Reiter

Home Offices – Does a Fall on the Way to the Kitchen Qualify as a Workplace Accident?

Germany's occupational accident insurance system covers primarily injuries resulting from workplace accidents. However, employees are covered not only while actually working, but also, for example, while on the way to and from the office coffee machine. But what about employees who work at home? If a home worker falls and hurts himself on the way to the kitchen to get something to drink, does that also qualify as a workplace accident?

Decision

The Federal Social Court recently addressed these questions (judgment of 5 July 2016, Ref.: B 2 U 5/15 R). In that case, the plaintiff, who had set up a home office in her attic, slipped on the steps leading to the kitchen on the ground floor below and broke her foot on her way to get a glass of water.

The insurer refused to consider the incident a workplace accident, and the Mainz Social Court rejected an action brought by the employee, but the Mainz Higher Social Court then granted the appeal. The insurer then appealed to the next higher instance, and the Federal Social Court concurred with the position of the accident insurer.

According to the court, the trip to the kitchen belonged to the personal sphere of the plaintiff since she did not go to the kitchen in the exercise of her insured activity; the use of part of a home for business purposes does not change the inherent nature of a home as part of the private sphere, which is as such not covered by occupational accident insurance. Unlike those who work on their employers' premises, the court argued, the plaintiff was not bound by any company rules or constraints. As a result, home workers must themselves assume responsibility for any risks associated with their private premises, especially since statutory occupational health insurers have hardly any way to implement preventive measures and reduce the potential for accidents while employees are not on the premises of their employers.

Comments

Accident insurers – and as a result indirectly the employers who bear the cost of the insurance – are likely to welcome this judgment since 12% of all German employees now work at home, and this figure can be expected to increase in the years to come.

If the Federal Social Court had granted the plaintiff's petition, that would have been tantamount to a not insignificant expansion of employee's insurance coverage. This would especially be the case in view or the flexible working hours of employees who work at home.

The reasoning of the Federal Social Court may at first glance seem tenuous, for the Federal Social Court has consistently confirmed that employees are covered by occupational accident insurance when they leave the premises of their employers for the purposes of taking meals, which the court considers essential for them to be able to perform their work. Here too, statutory occupational health insurers have no way to implement preventive measures to reduce the potential for accidents and there is also nothing to indicate that employees are subject to any rules or constraints when they leave their place of work to have lunch.

What does, however, make the decision of the Federal Social Court convincing is the fact that home workers can indeed take measures to eliminate dangers in their own homes and provide optimum protection, which is hardly possible in the case of a lunch break in an urban environment.

Dr. Hagen Strippelmann

Do Bonuses and Overtime Count Towards the Minimum Wage?

Decision A decision of the Federal Labor Court of 25 May 2016 (5 AZR 135/16) involved a dispute as to whether vacation pay and Christmas bonuses or extra pay for overtime or work at night, on Sundays and on holidays can be counted towards the minimum wage called for under the Minimum Wage Act (Mindestlohngesetz – MiLoG.

In the case at issue, the plaintiff's employment contract called for special pay premiums as well as a vacation bonus in the amount of 50% of a month's salary and a Christmas bonus in the same amount in addition to her basic wage (< EUR 8.50). According to her employment contract, the vacation bonus was to be paid in May and the Christmas bonus in November. In December of 2014, i.e., shortly before the Minimum Wage Act went into effect, the defendant entered into a works agreement with the works council that called for payment of both the vacation and Christmas bonuses in 12 monthly installments.

The plaintiff then argued that her monthly salary, annual bonuses and the pay premiums called for under the agreements covering her employment should be based on the legal minimum wage in the amount of a gross hourly wage of EUR 8.50. The Higher Labor Court essentially rejected the appeal, but did find that the plaintiff was entitled to a shift differential in the amount of a gross EUR 0.80 per hour for night work.

The plaintiff's appeal was unsuccessful. According to the decision of the Federal Labor Court, the plaintiff was not entitled to an increase in her monthly salary, annual bonuses and pay premiums. The court ruled that the plaintiff's employer had to pay the minimum wage for every hour actually worked and in fact satisfied this requirement by paying the amount called for in agreements covering the employment relationship in consideration for work performed. This does not apply to payments that the employer makes independently of work performed by the employee or to payments based on a specific legal requirement such as, for example, that contained in § 6(5) of the Working Hours Act (Arbeitszeitgesetz – ArbZG). For that reason, the shift differential for night work does not count towards the minimum wage. The unconditional and irrevocable payment of one-twelfth of the monthly wages each month qualifies as consideration for the purposes of compliance with the minimum wage requirement.

Implications for practice The Federal Labor Court's decision for the most part supports the argument to the effect that components of compensation other than the actual wages also count as wages for the purposes of compliance with minimum wage legislation. In particular, the judgment confirmed that vacation and Christmas bonuses that are paid unconditionally and irrevocably are the equivalent of wages for such purposes. This applies in any case if payment takes place within the period specified in § 2(1) of the Minimum Wage Act (Mindestlohngesetz – MiLoG), i.e., at the very latest on the final business day of the month following the month during which the corresponding work was performed. The Federal Labor Court confirmed that premium pay for overtime or work performed on Sundays and holidays counts as part of wages for the purpose of compliance with minimum wage requirements. Shift differentials for night work represent the sole exception to the provision contained in § 6(5) of the Working Hours Act.

Lena Jordan

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

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.

Labor law does not allow employers to opt for short-time work unilaterally. Working hours or 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.

Lena Jordan and Eileen Kölzer

"One bad apple spoils the barrel" – Damages Arising from an Unlawful Strike

In its judgment of 26 July 2016 (Federal Labor Court 26 July 2016 – 1 AZR 160/14), the Federal Labor Court ruled that the strike against the Frankfurt Airport called by the union that represents air controllers (Gewerkschaft der Flugsicherung – GdF) in the year 2012 was unlawful, and there is now talk of claims for damages in the amount of approximately EUR 5.2 million due to many flights having to be cancelled because of the strike.

The parties to the dispute were the trade union and the company that operates the Frankfurt Airport (Fraport). There had already been a collective agreement in place between the two parties, but parts of it had been terminated with effect as of the end of the year 2011. The following arbitration resulted in a recommendation that covered not only those aspects of the parts of the collective agreement that had been terminated, but also addressed those parts that had remained in effect.

The Federal Labor Court considered the strike called to force acceptance of the recommendation illegal and found that claims for damages were justified, but only in respect of Fraport. The court rejected claims for damages brought by the airlines.

Implications for practice

The decision revolves around the violation of a clause in a collective agreement that prohibits both parties to the agreement from engaging in work stoppages, lockouts etc. The trade union breached that clause by striking to compel acceptance of the arbitration recommendation, which would also have affected that part of the collective agreement that was still in effect and covered by a no-strike clause.

Under established case law, a strike must be viewed in its entirety, which means that a single unlawful measure can make the entire strike illegal: "a bad apple spoils the barrel". The Federal Labor Court leaves no room for making any distinction on the basis of the relative weight of illegal demands since they can hardly be assessed objectively.

Furthermore, Fraport can also not be expected to accept the argument that the union would have gone on strike anyway without demands pertaining to that part of the agreement still subject to the no-strike clause ('lawful alternative behavior'). If that had been the case, the different objectives would, as the Federal Labor Court correctly pointed out, have made it a different strike. Acceptance of the argument of lawful alternative behavior would be tantamount to giving trade unions a license to engage in (partially) unlawful industrial action.

Conclusions

Despite the fact that the decision attracted considerable attention because of the impressive damages claimed, it did not come as a surprise. The Federal Labor Court continued to adhere to its position to the effect that an unlawful demand – in this case due to breach of a no-strike clause, the severity of which is immaterial here – makes the entire strike unlawful, thereby giving the employer legitimate grounds for claiming damages. This

decision underscores once again that there are concrete limits to the right to strike anchored in the Basic Law (Grundgesetz) and will in the future discourage unions from promiscuously calling strikes without adequate preparation, not least of all because of the scale of damages at issue and explicit rejection of the argument of legal lawful alternative behavior that trade unions like to evoke.

Pia Pracht

This decision underscores once again that there are concrete limits to the right to strike anchored in the Basic Law.

Works Council not Entitled to "Independent" Internet

Headnote

A works council cannot require that an employer provide Internet connectivity that is independent of the employer's server (Federal Labor Court, order of 20 April 2016, 7 ABR 50/14).

Facts

A works council brought an action to have the court compel an employer to provide an Internet and telephone connection that was independent of its group proxy server, arguing that it was technically possible for administrators to track IP addresses and browser settings and access the works council's email correspondence through the central server. The Federal Labor Court had to decide whether the works council was entitled to a completely autonomous technical infrastructure for its telecommunication needs.

Decision

The Federal Labor Court concurred with the lower courts and denied the petition of the works council. The court first of all emphasized that § 40(2) of the Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) does entitle works councils to access to information and communication technology. Accordingly, that means a right to Internet access, email connectivity and telephone service, but the court also emphasized that employers have a legitimate interest in limiting the concomitant costs.

Ultimately, the Federal Labor Court concluded that the works council could be reasonably expected to use the means of telecommunication made available even if they are connected to the employer's proxy server, reasoning that the mere theoretical possibility that the employer could access communication of the works council did not suffice to justify any need for a separate server. The court also stated that an exception could be made at best if objective facts justified suspicion of abusive controls.

Comments

The decision of the Federal Labor Court is encouragingly clear and practical and provides legal clarity for all parties involved. The question as to whether works councils can be reasonably expected to allow their communication to pass through the central server of their employers has recently been a frequent subject of dispute due to the theoretical possibility of controls.

Obviously, employers still do not have the right to monitor the communication activities of their works councils. In its decision of 18 July 2012 (7 ABR 23/11), the Federal Labor Court had already ruled that works council Internet access may not be personalized and that such access is provided for the work council as a whole and not for the individual members.

It is also encouraging to note that the Federal Labor Court referred to the need of employers for security. For example, it is regularly necessary to take special measures to protect central servers from invasive attacks (firewall). Routing operational communication

through an external server gives rise to concerns as regards security and data privacy. The use of external free mail services should be avoided and works councils or other employee bodies should not be allowed to use such services.

Jens Völksen

Obviously, employers still do not have the right to monitor the communication activities of their works councils.

Artists' Social-Security Contributions – Compulsory Social Security for Independent Contractors!

Unlike salaried employees, independent contractors are under no obligation to participate in the statutory social-security system due to their independent status. However, artists, journalists and similar creatives who work as independent agents are an exception. They must contribute to the Artists' Social Welfare Fund (Künstlersozialkasse), which provides retirement, health and long-term care coverage (but not unemployment or accident insurance).

For the purposes of the Artists' Social Security Act (Künstlersozialversicherungsgesetz – KSVG), an artist is defined as anyone who is involved in the creation, performance or teaching of music, the performing arts or the visual arts or who offers services as a writer, as a journalist or in a similar capacity or teaches journalism or communication.

This broad definition has been refined by an extensive range of rulings contained in the case law of the Federal Social Court (examples of employment found to be subject to compulsory participation: director's assistant, web designer, advertising photographer, shareholder-managing director who is for the most part involved in artistic or journalistic activity and controls more than 50% of the shares or at least a blocking minority; examples of employment not subject to compulsory participation: fashion designer or interior designer).

A further prerequisite for compulsory enrollment in the social security system for artists is that the artistic or journalistic activity be carried out on a commercial basis and not only temporarily.

Implications for practice

The insured parties pay 50% of the contributions into the artists' social-security system, their clients 30% and the government 20%. Companies that use the works or services of self-employed artists, writers and similar creatives must pay into the system. Such companies include not only publishers of newspapers and magazines, television stations, TV production companies, publishing houses and advertising agencies, etc., but also companies that more than occasionally contract with independent artists or writers for advertising or public relations purposes.

A company that engages a free-lance photographer, copywriter or web designer may therefore become liable for payment of artists' social-security contributions. This is frequently overlooked.

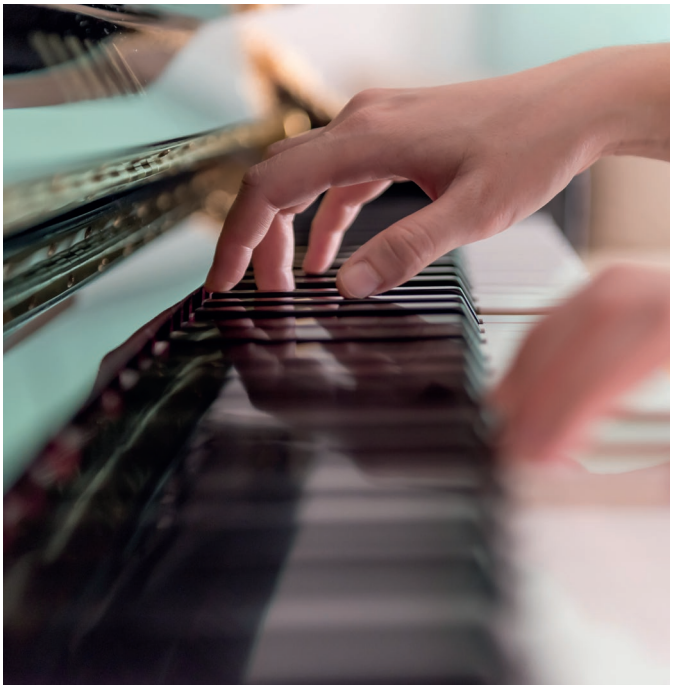
Artists' social-security contributions for the year 2016 come to 5.2% (a reduction to 4.8% has been announced for 2017). The taxable amount is based on the outlay for artistic, journalistic or similar services that a company has used. Companies liable for payment of artists' social-security contributions must report the total corresponding amount by 31 March of the following year.

If an undertaking fails to comply with this obligation, the Artists' Social Welfare Fund will assess the amount, which experience has shown will then regularly be higher than that would have been the case if the amount due had been properly reported. A monthly payment is also made in the course of the calendar year that is based on the taxable amount from the previous year.

Conclusions

Companies are advised to carefully examine the social-security status of independent contractors that provide artistic, journalistic or similar services. On the one hand, companies may be subject to reporting and payment obligations for employees in cases in which they would not have expected it (e.g., usually in the case of shareholder-managing directors of media companies whose activities are primarily of an artistic or creative nature). On the other hand, Deutsch Interconversion Bud has been significantly more vigilant since 2015 as regards payment of artists' social-security contributions, and fines and back payment of contributions for up to four years can be expected in the case of failure to comply with reporting or payment duties.

Pia Pracht



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