

Private Use of Company Car during Leave Phase of Part-Time Pre-Retirement Employment

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Decision

The Rhineland-Palatinate Higher Labor Court decided in its judgment of 12 March 2015 (Ref. 5 Sa 565/14) that an agreement covering the private use of a company car also applies during the leave phase of part-time pre-retirement employment unless the parties to the respective employment contract have agreed to a cancellation proviso or some other possibility for retraction of the benefit.

The plaintiff and the defendant had entered into a part-time pre-retirement employment agreement that called for application of what is referred to as the block model, which is based on two equally long periods. A work phase, during which the employee works full-time, is followed by a leave phase, during which the employee is released from his or her daily duties. The corresponding reduction in the employee's compensation is then spread over the entire term of the part-time pre-retirement employment agreement.

The plaintiff had been entitled to a company car for private use prior to entering into the part-time pre-retirement employment agreement. Nevertheless, the plaintiff was required to return the company car to the defendant at the end of the work phase.

The Higher Labor Court decided that the defendant had no right to deprive the plaintiff of the use of a company car after termination of the work phase. The court was of the opinion that the use of a company car constituted payment in kind and was therefore part of the compensation due the employee as long as the employee was entitled to receive such compensation.

The court reasoned that the return of the vehicle could also not be justified by arguing that the compensation

due the employee was halved during the term of the part-time pre-retirement phase and that the vehicle was fully available during the work phase. According to the court, it was to be sure normal to reduce the compensation of an employee working part-time in proportion to the reduced work schedule, but the use of a company car for private purposes is a payment in kind that cannot be divided and must for that reason also be provided during the period of part-time employment. The court then concluded that since the parties had failed to agree to a cancellation proviso or some other possibility for retraction, the provision governing the use of the vehicle remained in effect until the end of the entire period covered by the part-time pre-retirement agreement.

Implications for Practice

A few years ago, the Eleventh Chamber of the Rhineland-Palatinate Higher Labor Court (14 April 2005, Ref. 11 Sa 745/04) issued an opinion that differed in one significant point from that of the Fifth Chamber discussed here. The Eleventh Chamber argued that the employer could satisfy the employee's right to the use of a company car by making the car fully available during the work phase and that the employee would therefore not be entitled to the use of a company car during the leave phase. The Frankfurt a.M. Labor Court also shared this view in one of the few relevant decisions on the issue of company cars during part-time pre-retirement employment (2 June 2003, Ref. 15 Ca 1957/03).

Due to the stand of the Frankfurt a.M. Labor Court, the current decision of the Rhineland-Palatinate Higher Labor Court makes it even more important to include cancellation provisos in agreements covering the use of company cars by employees. In the event no such

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provision is made for termination of the use of company vehicles in the original contract, the omission should be rectified in the agreement governing part-time pre-retirement employment.

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 Hagen Strippelmann on +49 221 33660-503 or by email to hstrippelmann@goerg.de. For further information about the author visit our website www.goerg.com.

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