

Federal Administrative Court: Review of work on Sundays and public holidays

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Background

Those provisions of Hesse's Essential Services Ordinance (Bedarfsgewerbeverordnung – BedGewV) that allow employment on Sundays and public holidays in video rental outlets and public libraries, call centers and lottery operations have been found void. On the other hand, work on Sundays and public holidays is allowed in the bookmaking sector.

Present situation

The Working Hours Act (Arbeitszeitgesetz – ArbZG) contains a general prohibition of work on Sundays and public holidays. Exceptions apply only in cases in which it is in the public interest to have certain services available on Sundays and public holidays as well as during the week. In addition to activities that qualify as public services such as, for example, those of emergency responders, fire departments, hospitals, public transport operators and utilities, cultural and sports events as well as trade shows, broadcasters and publishers and bakeries are exempted from the general prohibition of work on Sundays and public holidays.

The Working Hours Act also makes provision for statutory instruments at the federal and state level that allow work on Sundays and public holidays. The State of Hesse has availed itself of this possibility and allowed work on Sundays and public holidays in connection with video rental outlets and public libraries, call centres and lottery operations as well as bookmaking operations. A trade union and two associations of protestant churches opposed this arrangement, and the administrative court partially voided the ordinance.

Upon the appeal of the State of Hesse, the judgment of the Kassel Administrative Court was upheld by the highest instance, the Federal Administrative Court.

Decision

The Federal Administrative Court declared Hesse's Essential Services Ordinance void insofar as it allows work on Sundays and public holidays in the case of video rental outlets and public libraries, call centres and lottery operations. The court found that the issuer of the statutory instrument could allow exceptions to the prohibition of work on Sundays and public holidays only to avoid "significant" losses and must take into account the need for protection of employees and the prohibition of work on Sundays and public holidays. According to the court, employment on Sundays and public holidays must be necessary to satisfy the everyday needs of the population or needs that are especially important on such days, and the activities mentioned above do not fulfil these conditions. In the opinion of the court, consumers can be expected to rent the DVDs, computer games or books that they would like to use on Sundays or public holidays during the preceding week and the fact that it is not possible to satisfy desires that arise on a Sunday or a public holiday does not result in any significant loss within the meaning of the law. It was also argued that the same applies as regards the purchase of lottery tickets since there is no lack of opportunity to do so during the week.

The court felt that the situation of call centres involved the necessity to make a distinction, arguing that there is generally no need for call centres to operate on Sundays and public holidays and that exceptions could be made at best for special areas and activities of call centres in cases in which special needs require that

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service also be maintained on Sundays and public holidays.

However, the court did consider an exception admissible in the case of bookmakers who operate at event venues since it would not otherwise be possible to satisfy the leisure-time needs of the public at events held on Sundays or public holidays.

Comments

For the time being the judgment of the Federal Administrative Court concerns “only” the law of the State

of Hesse, but since the relevant regulations of other German states are, however, frequently comparable, the implications of the judgment will not remain limited to Hesse.

Note

This overview is intended exclusively for the purposes of general information and is not a substitute for qualified legal advice in an individual case. If you should have any questions, please get in touch with your usual contact at GÖRG or with the author DrFrank Wilke by phoning +49 221 33660-544 or sending an e-mail to fwilke@goerg.de. For information about the author, please visit our website at www.goerg.de.

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