

## ILLEGAL CONTRACT FOR APPRENTICESHIPS

**HEADNOTE** Employers may train apprentices to exercise recognized vocations only under conditions specified by official regulations governing vocational training. Any other type of contractual arrangement is illegal. As a result, the employer must pay normal wages, which will regularly be higher, if they deviate from the prescribed conditions.

**FACTS** The Federal Labor Court ruled on the validity of what was referred to as a “training contract” on 27 July 2010 (- 3 AZR 317/08 -). The party to this contract was a young woman born in 1984 who first completed an initial period of preliminary training of one and a half years to qualify for normal training to become a painter. However, the woman rejected the idea of attending vocational school, which is part of the official course of training. As a result, the parties agreed to conclude what can be referred to as a “training contract” covering the period from 1 September 2005 up to 31 August 2007. During that time, she acquired the basic knowledge and skills required of a painter. The parties initially agreed upon gross remuneration in the amount of € 550.00 per month. However, the parties to the contract subsequently disagreed as regards the amount of remuneration. The young woman finally sued for the difference between the agreed remuneration and the minimum wage for unskilled workers involved in painting.

**DECISION** The Federal Labor Court decided in favor of the young woman in the final instance and awarded her the difference. The court ruled that what can be referred to as “training contracts” are void (section 138 of the German Civil Code). Parties to such agreements may not rely on them. The reason for this is that section 4(2) of the Vocational Training Act stipulates that training to exercise a recognized vocation may be provided only in compliance with regulations governing vocational training. However, these regulations call for attendance of a trade school. As a result, the parties were in violation of the law since they attempted to circumvent this requirement. However, since the claimant did actually work for the defendant, a constructive employment relationship did exist. This entails remuneration pursuant to section 612 of the German Civil Code, according to which the amount of compensation must be based on the minimum wage for unskilled workers employed as painters.

**COMMENTS** Freedom of contract is subject to strict constraints when it comes to vocational training. Training for all of some 350 governmentally recognized vocations is permissible only under contracts that satisfy the requirements of the Vocational Training Act. The choice of a different contractual arrangement may mean that agreements between the parties are invalid. The employer may have to make substantial

back payments. The decision at issue concerns only recognized vocations. Vocations also exist in many industries that may be practiced without governmentally recognized training. In these industries, qualification may be acquired without regard to any official regulations governing vocational training. However, according to section 26 of the Vocational Training Act, the most important provisions governing protection of individuals undergoing training also apply. According to section 6 of the Vocational Training Act, alternative conditions may be applied on a trial basis in the case of new vocations.