

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Federal Labour Court: Public holiday supplements depend on the employee's regular place of work

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If an employee does not always work from the same place it may be unclear whether they are entitled to supplemental pay for working on public holidays. This is governed by regulations specific to each Federal State. What public holidays apply if an employee works from home in a different Federal State? Or: What applies if an employee is sent to another Federal State on All Saints' Day where this is not a public holiday?

Facts of the matter

The second of these scenarios was brought before the Sixth Senate of the Federal Labour Court (Bundesarbeitsgericht, BAG) ([6 AZR 38/24](#)). The claimant had been employed as a technician at a hospital in North Rhine-Westphalia since 1996. The collective agreement for the public service employees of the Federal States ([TV-L](#)) applied to his employment contract. On All Saints' Day (01/11/2021), the claimant attended training in Hesse at the request of his employer. All Saints' Day is a public holiday in North Rhine-Westphalia, but is not in Hesse ([section 1 \(1\) Hesse Public Holidays Act](#), [section 2 \(1\) NRW Public Holidays Act](#)). The claimant therefore carried out his work in a Fed-

eral State where the working day was not a statutory public holiday. Nevertheless the claimant sought supplemental pay for working on a public holiday in accordance with section 43 no. 5 (1), section 8 (1) (d) TV-L. Was this correct?

The decision of the BAG

Yes, decided the BAG. Here, the **regular place of work** is decisive. In this case this was North Rhine-Westphalia. If the employee works on a day which, according to the provisions that apply to their regular place of work, is a public holiday, supplemental pay for working on public holidays must be paid. It does not matter whether the day was a public holiday in the location where the employee actually worked.

Under no circumstances was the decision of the BAG binding, though. The TV-L itself offers little help: Section 8 (1) (d) TV-L simply refers to "working on public holidays" without this term being more precisely defined elsewhere. In the previous instances the respondent employer had argued that the term "working on public holidays" presumed that there was a statutory public holiday at the place of work. It argued that the place of work should be understood in terms of the place of performance, which would have

been Hesse for the duration of the training course. However, as the wording does not state whether the actual location the work took place (Hesse) or the contractually agreed, regular place of work (North Rhine-Westphalia) should be used, this conclusion was in no way binding.

The intent and purpose of the provision was therefore taken into account. At first instance the Münster Labour Court (Arbeitsgericht, ArbG) relied on a decision of the BAG from 2021 where the supplemental pay serves to balance the additional burdens accompanying special forms of work (10 AZR 130/19). This resulted in the regular place of work being taken into account. If the working day there was a public holiday, this would mean that working was an additional burden, because the personal environment and the colleagues of the employee at his regular place of work would not have to work but the employee would.

The second instance judgment of the Hamm Regional Labour Court (Landesarbeitsgericht, LAG) did not follow the BAG (11 Sa 936/23). If the environment of the employee had to be taken into account the parties involved in collective bargaining would have focused on the place of residence of the employee. The intent and purpose of the provision could only be granting compensation for actual work carried out as an exception, which would otherwise have fallen under the ban on working in section 9 ArbZG. It is therefore incompatible to take the regular place of work into account. Employers could otherwise assign employees to work public holidays in another federal state, where, as was the case here in Hesse, the working day was not a statutory public holiday, without having to pay them supplemental pay for working public holidays.

The BAG was not convinced.

Practical significance

This judgment is welcomed. Since 2005 the BAG has held (5 AZR 475/04) that supplemental pay for working on public holidays is linked to statutory public holidays in the **place of work** in the absence of clear regulations to the contrary. The fact that the wording "place of work" provides little clarity is evident in the reasoning of the Hamm LAG, according to which it follows from the general understanding of language that the place of work is to be understood as the location where the work is actually carried out. Thankfully the BAG has made it clear that the regular place of work was meant instead.

The judgment is of direct relevance for employees who are employed under the collective agreement for the public service employees of the Federal States (TV-L). Whether section 8 of the collective agreements for public service employees TVöD Bund and TVöD VKA, which use exactly the same wording in this respect, will be interpreted in the same way will only become clear when the reasons for the decision are made available.

Regardless of this, employers are well advised to use clear regulations in their employment contracts when granting supplemental pay for public holidays, in particular when their employees frequently go on business trips to, attend training courses or have their home office in a different federal state.

The judgment could, however, also be relevant to the interpretation of the statutory ban on working on public holidays, section 9 Working Time Act (ArbZG), and continuing to pay employees for public holidays, section 2 of the Continued Payment of Wages and Salaries Act (EntgFG). The Fifth Senate of the BAG held that for the ban on working on public holidays the actual place of work was decisive (5 AZR

483/12). The regular place of work was not relevant in this case so far. The prevailing opinion in literature is that the obligation to continue to pay employees under section 2 EntgFG likewise depends on whether it is a statutory public holiday at the actual place of work. Even here, it

has not so far been about the regular place of work. It likewise remains to be seen until the publication of the reasons for the decision whether a change in case law is imminent.

Note

This overview is solely provided for information purposes and should not replace professional legal advice. In case of any queries, please get in touch with your designated GÖRG contact person or the author Dr Julian Stassek at +49 89 3090667 -0 or jstassek@goerg.de. Information about the author is available on our website www.goerg.de.

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