

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

Frankfurt, 9 September 2025

Federal Labour Court: Court settlement does not result in waiving annual leave

Alissa Spriesterbach

Clauses which intend to discharge statutory annual leave entitlements are regularly part of contracts to terminate employment contracts and settlements agreed in the Labour Courts. The following wording is often used: "All annual leave entitlements are granted in the form of actual time off."

One such clause was found to be invalid by the Federal Labour Court (Bundesarbeitsgericht, BAG) in its decision dated 3 June 2025 (case no.: 9 AZR 104/24), as a provision to "waive" or pay compensation for the minimum statutory annual leave first came into consideration after the end of the employment contract.

Facts of the matter

After the end of the employment contract the employee demanded compensation from his former employer for his minimum statutory annual leave for 2023, a total of seven days.

The employee had been unable to work due to illness from the beginning of 2023 to the end of the employment contract, which was why he was unable to take his annual leave. In March 2023 both parties agreed a settlement in the labour courts where the employment contract would come to an end on 30 April 2023 with the payment of severance pay.

At this point the employment contract should have lasted for approximately another month. Section 7 of the court settlement reads: "All annual leave entitlements are granted in the form of actual time off". After the court settlement process had been concluded the employee filed a claim for compensation for annual leave.

Ruling

The BAG upheld the claim and primarily justified its decision as follows:

The annual leave entitlement should not have been extinguished by section 7 of the court settlement. It held that the compensation clause represents an invalid waiver of the employee's annual leave entitlement in accordance with section 134 of the German Civil Code (BGB) in conjunction with section 13 (1) sentence 3 of the Federal Annual Leave Act (Bundesurlaubsgesetz, BUrlG), because this excluded granting the resulting (theoretically still possible) minimum statutory annual leave for the remaining month of employment.

The court held that this also applies when, as was the case here, it is already established at the time of concluding the settlement that the minimum statutory annual leave to which the employee is entitled can no longer be taken as *actual time off* as the employee was unable to work due to illness.

Even a valid settlement of the facts in accordance with section 779 BGB, to which the deviation prohibition in section 13 (1) sentence 3 BUrlG does not apply, had not been entered into. Such a settlement presumes that the parties were unclear about the reality, such as whether the annual leave was actually taken. That was not the case here. It was undisputed that the entitlement to annual leave persisted as the employee was unable to work due to illness.

Even the objection of the employer that the employee was not acting in good faith (section 242 BGB) and had breached the enforcement of the concluded court settlement, was not accepted by the BAG as the employer was not entitled to rely on the existence of the obviously unlawful provision.

Conclusion and comments

The discharge clauses that have to date been regularly used in contracts to terminate employment contracts and in court settlements may, provided the employment contract has not yet ended, no longer be used in relation to minimum statutory annual leave to which the employee is still entitled.

Neither the minimum statutory annual leave nor claims to compensation for minimum statutory annual leave which only arise later (that is, after

the end of the employment contract) may be excluded in ongoing employment contracts. The reason for this is the protective purpose of minimum statutory annual leave. This is supposed to allow for rest and recreation and thus protects employees' health – and should therefore not be negotiable. According to section 7 (4) BUrlG, a claim to compensation for annual leave that has not been taken first arises after the end of the employment contract. At this point the resting purpose of annual leave can no longer be achieved.

It, however, also follows from this decision that discharge clauses are not generally invalid.

The point in time the agreement is entered into is decisive here. After the legal end of the employment contract this clause may continue to be used because the discharge of annual leave entitlement has already come into force and the parties' negotiations are purely for compensation.

The difference between minimum statutory annual leave and additional contractual leave is also of particular importance. The strict deviation prohibition of section 13 (1) sentence 3 BUrlG only applies to minimum statutory annual leave (20 working days for a 5 day week). For further additional contractual leave, deviating provisions within the scope of a contract terminating an employment contract or a court settlement are in principle valid even during the ongoing employment contract.

If you require any further information on this topic please contact us and we will be happy to help.

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 Alissa Spriesterbach on +49 69 170000 204 or by email to aspriesterbach@goerg.de. For further information about the author visit our website www.goerg.com.

Our Offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Kantstr. 164, 10623 Berlin
Phone +49 30 884503-0
Fax +49 30 882715-0

HAMBURG

Alter Wall 20 - 22, 20457 Hamburg
Phone +49 40 500360-0
Fax +49 40 500360-99

FRANKFURT AM MAIN

Ulmenstr. 30, 60325 Frankfurt am Main
Phone +49 69 170000-17
Fax +49 69 170000-27

COLOGNE

Kennedyplatz 2, 50679 Cologne
Phone +49 221 33660-0
Fax +49 221 33660-80

MUNICH

Prinzregentenstr. 22, 80538 Munich
Phone +49 89 3090667-0
Fax +49 89 3090667-90