LEGAL UPDATE EMPLOYMENT LAW

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Works Council members permitted to use a company vehicle for private use is undue enrichment

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Remuneration of members of the Works Council is more and more becoming the subject of increasingly consolidated case law. The starting point remains the guiding principle of their voluntary role under Works Council constitution law: the post of member of the Works Council is unpaid. At the same time, members of the Works Council may not be favoured or disfavoured by reason of their office (section 37 (1) German Works Council Constitution Act (Betriebsverfassungsgesetz, BetrVG); section 78 sentence 2 BetrVG). In Germany, this is traditionally protected by law by the loss of earnings principle and the standard of comparison. Full-time members of the Works Council are paid the remuneration that they would have received if they were following the career that is usual in the establishment instead of exercising their role as a member of the Works Council. At the same time, they may not be paid any special benefits which are not objectively justified. Protection from a reduction in remuneration on the one hand and the prohibition on preferential treatment on the other form the legal framework in which all remuneration decisions and additional benefits are exercised.

Precisely these legal questions were dealt with by the Niedersachsen Regional Labour Court (Landesarbeitsgericht, LAG) in its decision dated 03/11/2025 (15 SLa 418/25). The crucial question here was whether being permitted to use a company vehicle for private purposes as a component of remuneration is compatible with the enrichment ban under section 78 sentence 2 BetrVG. This fundamentally prohibits a member of the Works Council from being granted or continued to pay remuneration in conjunction with their role as a member of the Works Council which extends beyond the statutory scope.

The Niedersachsen LAG followed this principle in its ruling of 03/11/2025 and deemed the company vehicle agreement to be invalid. The decision showed that non-cash benefits may only be permitted if they are based on objective criteria that are not connected with the member's role on the Works Council and are permitted within the scope allowed by Works Council Constitution law.

Facts of the matter

The claimant was employed by the respondent as a store manager and had been a full-time member of the Works Council for many years. In 2016, the respondent introduced social counselling. It solely offered members of the Works

Council the opportunity to voluntarily complete a corresponding training course and then work as a social counsellor.

After completing the training course, the claimant worked as a social counsellor from 01/07/2016. The respondent provided the claimant with a company vehicle and also permitted her to use it for private purposes. The respondent's Company Vehicle Guidelines did not permit store managers or comparable positions to use company vehicles for private purposes.

In 2024, the respondent outsourced the social counselling and requested that the claimant return the vehicle. Although the claimant complied with the request, she held the opinion that the respondent was not entitled to revoke her use of the company vehicle. The cost of a comparable vehicle came to €308.14 including the leasing rate, insurance costs and fuel cost minus 1% of the original price of the vehicle. The claimant asserted that the respondent was required to reimburse this to the claimant.

The Labour Court (Arbeitsgericht, ArbG) dismissed the claim. The claimant pursued her claim further and appealed, asserting in particular, that the company vehicle agreement was valid.

Ruling

The claimant’s appeal was unsuccessful. The court held that the claimant cannot demand any compensation from the respondent for the lost private use of the company vehicle in accordance with section 280 (1) sentence 1 German Civil Code (BAG) and section 283 (1) BGB.

In the opinion of the court there was no valid right to be provided with a company vehicle. It held that the underlying Company Vehicle Agreement was invalid from its inception as per section 134 BGB due to the infringement of the enrichment ban as per section 78 sentence 2 BetrVG . Section 78 sentence 2 BetrVG prohibits any enrichment of the members of the Works Council due to their office and serves to secure the independence of the Works Council and the equal treatment of the remainder of the staff.

The LAG clarified that the provision of a company vehicle that included private use was a non-cash benefit and therefore represented a component of remuneration. Enrichment is deemed to have occurred here, as this objectively represents preferential treatment compared to comparable employees. The court held that a subjective, intended enrichment by the employer was not the case here. Store managers who were not a member of the Works Council did not have a claim to a company vehicle. The court ruled that the claimant had received this additional benefit solely based on her Works Council duties,

as the respondent had only extended the offer of training and work as a social counsellor to members of the Works Council. These tasks would not have been available to the claimant had she not been a member of the Works Council.

The court also held that the role of social counsellor was not subject to a separate contractual relationship. The claimant had been completely released from this role. Neither the scope of the role nor the specific rights to give instructions under employment law had been agreed.

On this basis the court ruled that the private use of the company vehicle was a component of the claimant’s remuneration for her duties as a member of the Works Council. This went beyond the remuneration to be paid to the claimant in accordance with section 37 (2) BetrVG , as it was undisputed that the claimant had no right to be provided with a company vehicle she could

use for private purposes in her contractual role as store manager.

Comments

This decision underlines the strict applicability of the enrichment ban as per section 78 sentence 2 BetrVG.

Nevertheless, the opportunity to use a company vehicle for private purposes may also (continue to) exist after becoming a member of the Works Council. This also applies if a member of the Works Council has been completely released from their work duties in accordance with section 38 BetrVG. A decisive factor here may be that the majority of comparable employees receive a company car they are permitted to use for private purposes in accordance withsection 37 (4) BetrVG. The same applies in the event of a fictional promotion of the member of the Works Council to a position where they have been permitted the use of a company vehicle for private purposes.

Conversely, components of remuneration or other benefits that are solely related to an employee's position on the Works Council or were solely offered to members of the Works Council are prohibited.

Additional functions or special tasks should therefore only be offered on a clear basis under employment law and be granted on objective criteria that have nothing to do with the Works Council in order to avoid liability or invalidity risks.

This is not the same as when a member of the Works Council is provided with a company vehicle solely for business purposes. This may be permitted in accordance with section 40 (2) BetrVG, provided that the provision of the company car is required for the member of the Works Council to effectively carry out their tasks if their role as a member of the Works Council involves significant travel.

Overall, the decision encourages consistent implementation of the enrichment ban, in particular restraining from implementing individual custom solutions which benefit members of the Works Council.

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

Please note:
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