LEGAL UPDATE EMPLOYMENT LAW

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Federal Labour Court: Garden leave after termination not automatically possible

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Many pre-formulated employment contracts contain standardised garden leave clauses in accordance with which the employer is entitled to place an employee on garden leave on or after giving notice of termination whilst continuing to pay the employee's remuneration. Placing an employee on garden leave like this during the notice period ultimately has many benefits for the employer. If an employee is legitimately placed on garden leave after notice of termination has been given, this may be set off against any remaining annual leave owed to the employee until the end of the notice period, provided the garden leave is irrevocable, or the use of a provided company vehicle was withdrawn. These advantages only then arise for the employer, however, if the garden leave is valid.

In its decision dated 12 February 2025 (5 AZR 171/24), the Federal Labour Court (Bundesarbeitsgericht, BAG) confirmed that a pre-formulated clause is valid to withdraw the private use of a company vehicle without compensation in the event of legitimate garden leave during the notice period.

Now a recent decision from the BAG dated 25 March 2026 (5 AZR 108/25) has clarified that employment law clauses contained in General Terms & Conditions which entitle the employer to place an employee serving their notice period on garden leave to the end of the notice period whilst continuing to pay them, are invalid. The BAG, at the highest level of the judicature, has now ruled that in any case blanket garden leave clauses in employment contracts will no longer be valid in the future. What this decision of the BAG means for employers and what should be paid attention to in the future is discussed below.

Starting position

The employee's interest in being provided actual work to perform by the employer is a general personality right protected by the constitution in accordance with Art. 2 (1) in conjunction with Art. 1 (1) of the German Basic Law (Grundgesetz, GG). The employee therefore has the right to be provided with actual work to do, provided there are no overriding interests of the employer that outweigh this. In many companies, it is assumed that after notice of termination has been given the employer's interest in placing the employee on garden leave generally overrides the employee's interest in continuing to work. Therefore, it has been common practice until now that employees are mostly automatically placed on garden leave by blanket garden leave clauses in their employment contracts releasing them from their obligation to

perform work after notice of termination has been given, generally offsetting any remaining annual leave entitlement. However, the BAG has now clarified that it is not quite this easy.

Garden leave after dismissal is only possible in the event of overriding interests of the employer

In the case underlying the BAG's decision, an employment contract contained a clause where the employer was entitled to place the employee on garden leave on or after giving notice of termination, regardless of who initiated the dismissal, while continuing to pay the employee but releasing them from their obligation to perform work. The parties had also entered into a contract for a company vehicle. Among other things, this stated that the employer's consent for the employee to use the vehicle for business and personal purposes may be revoked by the employer in the event of the employee being placed on garden leave.

The employee then gave notice to terminate the employment contract himself which was subject to the contractual notice period of six months. After the notice of termination had been given, the employer placed the employee on garden leave until the end of the notice period releasing him from the obligation to perform work and requested he hand back the company vehicle he had been provided with. The employee complied with this request without receiving compensation from the employer for the loss of the company vehicle. The employee then requested compensation for the remaining duration of the employment contract until the end of the notice period for the premature return of his company vehicle. He was of the opinion that the garden leave was not valid; therefore, as a result, the company vehicle should also not have been taken away.

While the claim was partially rejected by the Oldenburg Labour Court (Arbeitsgericht, ArbG), the Niedersachen Regional Labour Court (Landesarbeitsgericht, LAG) upheld the claim in full and ordered the employer to pay the employee compensation for the premature return of his company vehicle for the entire period of garden leave. The court held that the employee was not effectively placed on garden leave and released from his obligation to perform work. The garden leave in question in this dispute was not found to be legitimate on the basis of either the clause in the employment contract or from any other viewpoint. In particular, the court ruled that the garden leave clause contained in the employment contract was invalid as it unproportionally disadvantaged the employee.

The BAG shared this opinion. It held that the garden leave clause was invalid because the employee was unreasonably disadvantaged contrary to the principle of good faith. The interest of an employee in working until the end of their employment contract overrides the interest of the employer to place the employee serving their notice period on garden leave to the end of the notice period. A blanket garden leave clause prevents the employee from having the opportunity to assert their increased interest in performing their work in individual cases.

The BAG referred the matter back to the LAG, however, as the LAG had not sufficiently considered whether, regardless of the (invalid) contractual clause, the employer was nevertheless permitted to place the employee on garden leave after notice of termination has been given until the end of the notice period, as in this specific case the employee's interests are outweighed by those overriding protected interests of the employer. If this was the case, placing the employee on garden leave would be lawful, even though the garden leave clause in the employment contract is invalid.

Conclusion and comments

The decision makes it clear that employers can no longer simply place their employees on garden leave in the future on the basis of a standard garden leave clause in the employment contract after notice of termination has been given until the end of the notice period. Employees are not only obligated to perform work but rather (conversely) also have a strong right to be provided with actual work to perform. This right also exists after notice of termination has been given during the notice period until the end of the employment contract. The employer may only interfere with this right in exceptional circumstances if the interest of the employee is outweighed by a protectable interest of the employer in placing the employee on garden leave on a case-by-case basis. In the event of a dispute the employer is fully responsible for producing the evidence and proof.

It still continues to be possible to put employees on garden leave after notice of termination has been given, but this is no longer purely automatic and is only possible if the interests of the employer actually outweigh those of the employee. After this decision of the BAG the principle that the employer generally always has an overriding interest in placing an employee on garden leave after notice of termination has been given and therefore the garden leave (or a relevant clause in the employment contract) is valid is off the table.

Employers should therefore review and update their standard employment contracts. In any case, standard contracts should state that the employee will be placed on garden leave if there are objective reasons to do so and when the interests of the employer in placing the employee on garden leave outweigh those of the employee and be linked to specific examples.

The BAG also clarified in its ruling that it is still possible to place an employee on garden leave even if there is an invalid clause in the employment contract. It is therefore also possible to place an employee on garden leave even without any express garden leave clause in the employment contract provided the employer can demonstrate and prove the objective reasons why the interests of the employer outweigh the employee's interest in performing their work on a case-by-case basis. Examples of such objective reasons are protecting trade secrets, a significant loss of trust, specific operational disruptions and that the position has become redundant. It is important here that these reasons are not just justified in the abstract but also must be documented with evidence. In any case, the requirement for legitimate garden leave is that the employer's interest in putting an employee on garden leave override the employee’s interest in performing their work on a case-by-case basis.

Every time employers place an employee on garden leave, they should therefore review whether there are objective reasons present that mean the employer's interest in putting an employee on garden leave overrides the employee’s interest on a case-by-case basis and if present these should be clearly documented. They should carefully compare the conflicting interests in the specific case and determine and document the outcome of this in full.

Employers would therefore be well advised to only unilaterally place employees on garden leave in the future on the basis of specific, comprehensive and well documented objective reasons. Otherwise, the garden leave will be invalid and there could be compensation payments owed due to invalidly recalling the private use of a company vehicle or compensation for annual leave entitlement not taken, because unused annual leave entitlement is not offset if the garden leave is invalid. In addition, other benefits for employees, such as bonus payments which

are linked to certain goals, may become a matter of dispute if an employee is prevented from achieving a certain goal if they are placed on invalid garden leave.

If employers want to play it safe with the topic of garden leave it may be worth trying to find a mutually acceptable solution with the employee, if possible, as mutually agreed garden leave is not subject to the above requirements.

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

Please 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 Timo Rehfisch on +4922133660541 or trehfisch@goerg.de. Information about the author is available on our website www.goerg.de.

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