



YOUR BUSINESS LAW FIRM



Externer Employment Tracker 08_2024_EN

August 2024

Stay up to date with us

With our Employment Tracker, we regularly look into the "future of labour law" for you!

At the beginning of each month, we present the most important decisions expected for the month from the Federal Labour Court (BAG) and the European Court of Justice (ECJ) as well as other courts. We report on the results in the issue of the following month. In addition, we point out upcoming milestones in legislative initiatives by politicians, so that you know today what you can expect tomorrow.

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Recent decisions

With the following overview of current decisions of the past month, you are informed which legal issues have been decided recently and what impact this may have on legal practice!

Subject	Date/ AZ	Remark/ note for practice
European Court of Justice		
ECJ on the protection of pregnant employees in the event of dismissal	27.06.2024 - C-284/23 -	<p>A pregnant employee must be given a reasonable time to challenge her dismissal in court. A two-week period for filing an application for leave to sue seems too short.</p> <p><i>This has been decided by the European Court of Justice.</i></p> <p><u>Facts</u></p> <p>In the main proceedings, an employee of a nursing home challenged her dismissal before a German labour court. She relied on the prohibition against dismissing a pregnant woman. The labour court was of the opinion that it would normally have to dismiss the complaint as untimely.</p> <p>By the time the employee learned of her pregnancy and filed suit, the normal time limit under German law – three weeks after receipt of the written notice of termination – had expired. In addition, the employee had failed to file an application for leave to file a late action within the additional two-week period provided by German law.</p> <p>However, the Labour Court questions the compatibility of the German legislation in question with the Pregnant Workers Directive. It has therefore referred the matter to the European Court of Justice.</p> <p><u>The decision of the European Court of Justice</u></p>

The Court of Justice notes that, under German legislation, a pregnant employee who is aware of her pregnancy at the time of her dismissal has a period of three weeks in which to bring an action. By contrast, an employee who, for reasons beyond her control is not aware of her pregnancy before the expiry of that period has only two weeks in which to bring such an action.

In the Court's view, such a short period, particularly in comparison with the normal period of three weeks, is incompatible with the Directive. In view of the situation in which a woman finds herself at the beginning of her pregnancy, such a short period is likely to make it very difficult for the pregnant worker to obtain proper advice and, if necessary, to draw up and lodge an application for leave to bring a late action and to bring the action itself.

However, it is up to the labour court to determine whether this is in fact the case.

Upcoming decisions

With the following overview of upcoming decisions in the following month, you will be informed in advance about which legal issues will be decided shortly and what consequences this may have for legal practice!

Subject	Date/ AZ	Remark/ note for practice
Federal Labour Court		
Right to extra pay for working on a public holiday for training purposes in a federal state in which there is no public holiday?	01.08.2024 - 6 AZR 38/23 -	<p>It is disputed whether there is a collectively agreed public holiday premium even if the work is performed at a place of work for which no public holiday is specified.</p> <p>The plaintiff is employed by the defendant hospital in North Rhine-Westphalia. On November 1, 2021, the plaintiff attended a training course in Hessen. All Saints Day on November 1 is a public holiday in North Rhine-Westphalia, but not in Hessen.</p> <p>The defendant hospital credited the plaintiff for the hours worked on November 1, 2021, but did not pay any holiday bonus.</p> <p>The plaintiff is suing for the unpaid holiday bonuses. He is of the opinion that the legal and factual circumstances at the usual place of work, i.e. North Rhine-Westphalia, are decisive for the calculation of the collectively agreed holiday pay (Sec. 8, Subsection 1, Sentence 2, Letter d), in the version of § 43, No. 5, Subsection 1, Letter d), of the TV-L. 1 sentence 2 letter d) TV-L).</p> <p>The defendant hospital, on the other hand, is of the opinion that the entitlement to the payment of a holiday premium requires the actual performance of work at a workplace for which a holiday has been established.</p> <p>The Labour Court ruled in favour of the plaintiff, while the Regional Labour Court ruled in favour of the defendant hospital. In his appeal to the Federal Labour Court, the plaintiff is still seeking payment of the holiday premium.</p>

Legislative initiatives, important notifications & applications

This section provides a concise summary of major initiatives, press releases and publications for the month, so that you are always informed about new developments and planned projects.

Subject	Timeline	Remark/ note for the practice
New rules on works council compensation announced	24.07.2024	<p>The new regulations on works council remuneration were published in the Federal Law Gazette on July 24, 2024.</p> <p><u>The amendment includes the following new provisions:</u></p> <ul style="list-style-type: none"> ▪ The following clarifying sentences have been added to Sec. 37 Subsection 4 of the Works Constitution Act (BetrVG): <i>"For the purpose of determining comparable employees pursuant to sentence 1, the date of assumption of office of the works council shall be used unless there is an objective reason for a later determination. The employer and the works council may regulate a procedure for determining comparable employees in a works agreement. The determination of the comparability in such a works agreement may only be reviewed for gross errors; the same applies to the determination of the comparable person, provided that it has been mutually agreed upon by the employer and the works council and documented in writing."</i> ▪ § 78 BetrVG was amended as follows: <i>"There is no advantage or disadvantage with respect to the remuneration paid if the member of a representative body referred to in sentence 1 meets the operational requirements and criteria necessary for the granting of remuneration in his or her person and the determination is not based on an error of assessment."</i> <p>The new rules entered into force on July 25, 2024.</p>
European AI Act takes effect on August 1, 2024	01.08.2024	<p>The European AI Act will enter into force on August 1, 2024. The AI Act provides for staggered applicability.</p>

The Act will be fully applicable 24 months after its entry into force. The following parts will apply earlier:

- the ban on AI systems that pose unacceptable risks will apply 6 months after entry into force;
 - the codes of conduct will apply nine months after entry into force;
 - the rules for general purpose AI systems that must meet transparency requirements will apply 12 months after entry into force;
 - for high-risk systems, obligations will apply 36 months after entry into force.
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Local presence: your contacts



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