

Legal Update

Labor Law

Presence of a lawyer during company discussions on the reintegration of employees after long-term or repeated absence from work due to illness (Betriebliches Eingliederungsmanagement – BEM)

Jens Völksen

Cologne, 19 May 2015

Decision

On 18 December 2014, the Higher Labor Court of Rhineland-Palatinate (5 Sa 518/14) held that an employee does not as a rule have a right to be accompanied by a lawyer to internal company discussions on reintegration after illness. The court indicated that reintegration after illness is aimed primarily at developing opportunities for continuing the employment relationship. The focus is not on terminating the employment relationship. Consequently, it is not necessary to involve a lawyer in order to guard against suffering possible legal disadvantages. Even the fact that the employee may be experiencing health problems – which can usually be assumed – does not mean that the assistance of a legal representative is required.

Relevance in practice

The decision provides legal clarity. If they are not permitted to have their own lawyer present, employees often refuse to hold discussions with their employer. At any rate, a right to have one's own lawyer present does not generally exist in the case of talks on reintegration at work after illness. Nonetheless, distinctions have to be

drawn in individual cases. If the employer itself is represented by a lawyer at talks on reintegration after illness, the employee should also be allowed to be accompanied by his legal adviser so that the parties are on an equal footing.

In addition, the courts are sometimes in favor of an employee having his lawyer accompany him to a meeting if a dismissal for suspected serious misconduct is involved. The reason for this is that the purpose of meetings of this kind is to prepare a dismissal notice. This applies, in any case, where the employer is also represented by a lawyer. Accordingly, the employer should at least let the employee know in advance of a meeting that it intends to bring its own legal adviser. This would allow the employee to decide himself whether he also wishes to be accompanied by an adviser. However, if the meeting involves a "normal" staff appraisal, the employee will, as a rule, not be entitled to be accompanied by a lawyer. As long as discussions do not concern termination of the employment contract or significant changes to it, it is an internal company matter for the parties to discuss without an external adviser being present.

Legal Update

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 Jens Völksen on +49 221 33660-503 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

Our offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Klingelhöferstraße 5, 10785 Berlin
Phone +49 30 884503-0, Fax +49 30 882715-0

COLOGNE

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

ESSEN

Alfredstraße 220, 45131 Essen
Phone +49 201 38444-0, Fax +49 201 38444-20

FRANKFURT AM MAIN

Neue Mainzer Straße 69 – 75, 60311 Frankfurt am Main
Phone +49 69 170000-17, Fax +49 69 170000-27

HAMBURG

Dammtorstraße 12, 20354 Hamburg
Phone +49 40 500360-0, Fax +49 40 500360-99

MUNICH

Prinzregentenstraße 22, 80538 München
Phone +49 89 3090667-0, Fax +49 89 3090667-90