

# Legal Update

## Labor Law

### Proper Dismissal is Important!

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#### Decision

The Schleswig-Holstein Higher Labor Court ruled in a recent judgment (13 Oct. 2015, 2 Sa 149/15) that notice of dismissal cannot be served by simply depositing the notice in a residential mailbox on a Sunday. The Higher Labor Court was of the opinion that it cannot be assumed that the intended recipient will take cognizance of a notice of dismissal delivered on a Sunday. Since no mail is delivered on Sundays or holidays, employees cannot be expected to check their mailboxes on those days. Notice of dismissal deposited in a mailbox on a Sunday must therefore regularly be considered to have been delivered on the next working day. The Schleswig-Holstein Higher Labor Court expressly made it clear that this also applies if a probationary period ends on a Sunday.

**Implications for practice** This decision provides an occasion for addressing the provisions of law regarding the delivery of termination notices. Late delivery of a notice of dismissal can expose an employer to serious legal repercussions. This would apply, for example, if – as is the case here – a probationary period ends and protection under the Employment Protection Act (*Kündigungsschutzgesetz* – KSchG) is triggered. Another possibility is that the period of notice could be effectively extended (e.g., in the case of termination with effect as of the end of a specific quarter). In such cases, it is necessary to ensure in advance that a notice of dismissal is served in a timely manner.

The best alternative is always to have the notice hand delivered by a messenger on the company's premises in the presence of witnesses or at the recipient's home (ideally with confirmation of receipt). It is also possible – but may be risky – to give the notice to a (adult) member of the employee's family living in the same household. It is important that the messenger be aware of the content of the notice of dismissal. Ideally, the messenger should be the one to put the letter in the envelope. If hand delivery is not possible, a notice of dismissal may be deposited in the employee's mailbox at the place of residence. In this case, it is necessary to make sure this takes place on a working day and by about 2:00 p.m. since mail delivery will regularly no longer be expected after that time.

Registered mail with confirmation of receipt is not advisable for the purposes of compliance with deadlines since receipt effectively takes place not upon notification, but upon actual delivery. As a result, registered mail without confirmation is to be preferred. It is also important here to make sure that the registration number is recorded by the individual who puts the notice in the envelope.

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## 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](mailto:jvoelksen@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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