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Employment Law Newsletter

Issue 2 2026

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■ EDITORIAL

Dear readers,

A warm welcome to the summer edition of our employment law newsletter. Temperatures are rising, and with them, it seems, the number of current employment policy issues and relevant court decisions. As always, we provide you with a concise overview of both here.

We begin with a legislative development: the reform of the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG). The forthcoming amendments to the Act are driven by European law and primarily involve changes to the procedure for asserting potential claims arising from discrimination. Our Cologne-based colleagues Gina Susann Kriwat and Luisa Sause outline the key aspects of the reform and assess them.

The following article by Stephan Sura, also from Cologne, deals with a topic that is only seemingly lighter: the presence of dogs in the workplace. Since the COVID-19 pandemic at the very latest, more and more employers have been tolerating their employees bringing their four-legged friends to work on a temporary or even permanent basis – but do employees actually have a right to do so? And how can an employer introduce a ban?

In our ten most important court decisions, we then present as usual what we consider to be the most interesting rulings from the labour courts, this time covering a range of topics from the relevance of total working hours in an equal pay claim through the dismissal of a whistleblower to the challenge of a works council election following an interim re-election.

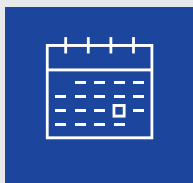
This time, Jan Hansen contributes to our section 'Current developments in pensions' with a recent decision from the Federal Labour Court on the subject of the abuse of rights in claiming a retirement pension. As always, we conclude with a look at our unyer network, this time to Luxembourg, where Raphaël Schindler and Capucine Falgareiro Douchet from our local Luther team shed light on the rules governing public holidays there.

We hope you find our selection an informative read and look forward to your feedback. All the best and a lovely summer!

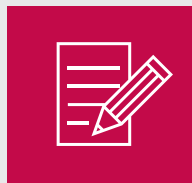
Yours,

Achim Braner

Events, publications and blog



You will find an overview of our events [here](#).



You will find a list of our current publications [here](#).



You will find our blog [here](#).

■ MAIN TOPICS

The reform of the General Equal Treatment Act

The Federal Ministry of Justice and Consumer Protection and the Federal Ministry of Education, Family Affairs, Senior Citizens, Women and Youth in Germany recently presented a draft amendment to the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG). The first reading in German Parliament took place on 11 June 2026. The following article analyses the contents and implications of the forthcoming changes.



Background

The aim of the reform is to further develop the General Equal Treatment Act into a modern and effective instrument for protection against discrimination. However, the specific background lies in two developments under EU law: Firstly, infringement proceedings initiated by the European Commission in 2015 against Germany for inadequate transposition of Directive 2004/113/EC on equal treatment between men and women in the access to and supply of goods and services. And secondly, the transposition of the new Directives (EU) 2024/1499 and (EU) 2024/1500 on standards for equality bodies, the transposition deadline for which expired on 19 June 2026.

Extension of the time limit for bringing claims under the Act and extension of the 'gender' ground

Under the new version of the Act, the time limit for asserting claims for compensation and damages under Sections 15 and 21 General Equal Treatment Act is to be extended from

the current two months to four months. Furthermore, in the infringement proceedings against Germany, the European Commission criticised the fact that Directive 2004/113/EC does not permit quantitative exceptions to its scope of application. Consequently, the restriction of the civil law prohibition of discrimination in the current Section 19 (1) Sentence 1 General Equal Treatment Act to mass transactions in relation to the characteristic of 'gender' is incompatible with the Directive. The reform to the Act now adds a new second sentence to provision, according to which unlawful discrimination on grounds of sex is also possible outside the context of mass transactions.

Extension of protection against sexual harassment, for maternity and pregnancy

By deleting the reference to Section 2 (1) No. 1-4 General Equal Treatment Act in its future Section 3 (4), sexual harassment is to be regarded as discrimination throughout the entire material scope of Section 2 (1) General Equal Treatment Act. Furthermore, the deletion of Section 2 (1) No. 1-4 in Section 3 (1) General Equal Treatment Act clarifies that

less favourable treatment of a woman on the grounds of pregnancy or maternity always constitutes direct discrimination on the grounds of sex.

Expansion of the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle – ADS)

In the implementation of the above-mentioned EU Directives, the Anti-Discrimination Agency is to provide better support to victims of discrimination under the General Equal Treatment Act and play an active role in dispute resolution. To this end, a conciliation body for alternative dispute resolution is to be established within the Anti-Discrimination Agency. In addition, the Agency's scope for participation in court proceedings will be expanded: in future, it may act as a representative of the disadvantaged party and submit statements.

Amendment of the 'church clause'

Furthermore, Section 9 General Equal Treatment Act is to be adapted to the case law of the ECJ and the Federal Constitutional Court (see ECJ, decision of 17 April 2018 – C-414/16 [Egenberger] and Federal Constitutional Court, decision of 29 September 2025 – 2 BvR 934/19). Until now, the wording of the provision allowed for the conclusion that differential treatment could be justified both on the basis of the employer's right to self-determination and on the basis of the nature of the work. In the future, there must always be a link to the specific work. The previous alternatives of 'right to self-determination' and 'link to the work' are thus combined.

Change from 'age' to 'life age'

Across the board within the Act, the ground of discrimination 'age' is renamed 'life age'. This makes it clear that discrimination can occur not only on the grounds of advanced age, but also in the case of young people. Nevertheless, the change does not entail any substantive modification, as case law has already been based on this principle.

Consequences

In practice, the employee's ability to initiate conciliation proceedings and the employer's involvement in such proceedings have particular implications for the employer. Employers may be required to respond substantively to allegations of discrimination within short timeframes. This necessitates robust internal documentation of selection decisions, performance appraisals and complaints procedures. Although statements made during conciliation proceedings are not necessarily admissible in subsequent court proceedings, they *may* be. Added to this is the extension of the time limit for bringing claims to four months. For employers, this results in an even longer period of uncertainty as to whether, for example, rejected applicants will pursue allegations of discrimination.

Meanwhile, the problem of abusive claims by 'AGG-hoppers', meaning people who systematically provoke or file mass claims of discrimination in order to secure compensation under Section 15 (2) General Equal Treatment Act, remains unresolved. For employers, the question arises as to what will happen if these persons also make use of the Anti-Discrimination Agency's new infrastructure: the Agency is required to examine enquiries without regard to discrimination, but there is no provision for a preliminary check for abuse. In practice, it is advisable not to wait for the reform to serve as the catalyst for professionalising discrimination and complaints management. Those who focus early on clear structures, careful documentation and targeted training limit risks in General Equal Treatment Act proceedings and contribute to achieving the objective of equal treatment within the organisation.

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Dogs in the workplace

In an increasing number of workplaces, employees are bringing their four-legged friends with them, sometimes even on a regular basis. Many employers are tolerant of this, yet there is often uncertainty regarding the legal permissibility of such arrangements and the options for prohibiting them.

No general right

More and more employers are encouraging staff to bring their dogs to work, whether to support employees, to lighten the atmosphere in the workplace, or to gain an advantage in the competition for skilled workers. However, bringing pets into the office also carries the potential for conflict, usually when they cause disruption. Generally speaking, an employee has no legal right to bring a dog to the workplace. Conversely, however, an employee also has no legal right to demand that a ban on dogs be imposed, unless such a ban is already in place across the board for safety or hygiene reasons. In practice, the presence of dogs is simply tolerated – and it is precisely this that raises questions.

Past tolerance

The fact that dogs have been tolerated in the workplace up to now does not necessarily create a binding precedent for the future. Within the scope of their managerial authority, employers are entitled to specify the nature, place and time of work at their reasonable discretion, provided these conditions

are not already determined by a collective agreement, a works agreement or by law. This also covers employees' conduct in the workplace. Regardless of whether bringing dogs to work is classified as an aspect of the work itself or of the workplace regulations, it is subject to the employer's instructions.

In the court ruling that remains the most relevant to this day, the Higher Labour Court Düsseldorf ruled in 2014 that the employer's right to issue instructions also extends to the instruction that a dog should no longer be brought onto the premises in future (decision of 24 March 2014 – 9 Sa 1207/13). Even if the employer has given the dog owner permission, this may be revoked, as such permission is logically subject to the provision that the dog does not disrupt work processes and is not perceived as a threat. The fact that an employee may have been allowed to bring a dog into the office for several years does not limit the employer's right to issue instructions, particularly if the animal's threatening behaviour causes anxiety amongst other staff members. The situation would only be different if the employer had expressly authorised the dog to be brought into the office.



Legal basis for a right to bring dogs into the office?

Mere tolerance of dogs does not, therefore, automatically amount to an (overall) consent – and even if it did, the employer may revoke it within the limits of reasonable discretion pursuant to Section 315 German Civil Code (Bürgerliches Gesetzbuch – BGB). Furthermore, the establishment of a company practice is also ruled out: Any tolerance, even if unconditional, merely specifies the parameters under which the employee carries out their work. However, no entitlement arises from this in the absence of a permanent intention on the part of the employer to commit to this, as long as the employer does not demonstrably accept the permanent presence of the animals (see also Higher Labour Court Rhineland-Palatinate, decision of 8 September 2022 – 2 Sa 490/21).

A right to bring a dog to work may, however, arise if this is permitted for other employees. If dogs are tolerated in general, the employer may, under the principle of equal treatment, only prohibit a specific employee from doing so if there are objective criteria for differentiation, such as a particular spatial situation or the behaviour of the specific animal. Exceptions to the principles outlined above apply where an employee is medically dependent on a dog to manage their daily life and, consequently, to perform their work. In the case of such assistance dogs, there is, in principle, a right to bring the dog to work or for the employer to tolerate its presence.

Prohibitions

Without prior authorisation, the employer may at any time order that dogs must not be brought to the workplace. Once the animals have been tolerated, the imposition of a ban and the associated exercise of the employer's right to issue instructions must, in turn, be in accordance with reasonable discretion. Converting a permission to bring a dog to work into a ban is particularly relevant if a dog disrupts business operations or if employees are afraid of it. The same applies to the restructuring of business premises. If an employee breaches an established ban, this constitutes a breach of duty which may justify a written warning and, in the event of a repeat offence, dismissal on grounds of conduct. To avoid conflicts and to ensure acceptance, employers should proactively establish rules governing the bringing of dogs into the workplace and make it clear that, in the event of

disruptions or operational restructuring, the permission may be revoked at the employer's reasonable discretion.

Liability

If dogs are brought to the workplace, this may give rise to a rare instance of animal owner liability under Section 833 Sentence 1 German Civil Code, which also applies to employees who bring dogs onto the premises. Such an employee is liable for any injuries to other employees or damage to premises and property. A limitation of liability applies only to service dogs. If a dog is not brought in as an assistance dog, there is no connection to the performance of the employee's duties. Joint liability on the part of the employer may be considered if the employer has not prohibited the dog from being brought into the workplace despite behavioural issues.

Involvement of the works council

Under Section 87 (1) No. 1 Works Constitution Act (Betriebsverfassungsgesetz – BetrVG), the works council has a co-determination right in matters concerning the organisation of the workplace and the conduct of employees within it. The scope of co-determination covers the organisation of staff relations, i. e. the establishment of rules of conduct to ensure undisturbed work processes, collective cooperation and harmonious working relationships, over which the employer may exert influence. By contrast, regulations concerning work performance – that is, measures relating solely to the performance of work – are exempt from co-determination. Bringing dogs to the workplace primarily affects order within the workplace and the interaction between employees, but not the core of their work. Consequently, the works council must be involved when regulations concerning the bringing of dogs to work are drawn up. This also applies where the presence of a service dog is concerned. In such cases, there is likewise a right of co-determination regarding the arrangements for bringing the dog to work, but not regarding the whether or not.

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■ THE TEN MOST IMPORTANT DECISIONS

Fictitious promotion entitlement for works council members

For the (notional) promotion of works council members, knowledge, skills and qualifications acquired whilst in office must also be taken into account, insofar as these are relevant to the position in question.

Federal Labour Court, decision of 5 November 2025 – 7 AZR 185/24

The case

The plaintiff is a works council member at the defendant's company. In 2020, he applied for an internally advertised post as press officer. During his term of office on the works council, he had attended several specialist seminars relating to press and public relations work and had obtained a so-called 'management licence'. The defendant decided to offer the plaintiff the post of press spokesperson with remuneration in accordance with the 'Tarif Plus' pay scale of the in-house collective agreement. However, the plaintiff declined the offer so that he could devote himself to his works council duties. Consequently, the defendant did not increase his remuneration, and later – suspecting that the plaintiff had been unduly favoured – even downgraded him. The plaintiff then argued that he had a constructive right to promotion under Section 78 Sentence 2 Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) in conjunction with Section 611a (2) German Civil Code (Bürgerliches Gesetzbuch – BGB) to the post of press spokesperson offered to him, and consequently demanded remuneration in accordance with the 'Tarif Plus' pay scale.

The decision

Whilst the Higher Labour Court Lower had regarded the defendant's offer arising from the recruitment process for the post of press spokesperson as an impermissible favouring of the plaintiff in his capacity as a works council member and had dismissed the claim, the Federal Labour Court upheld the plaintiff's appeal and held that he was entitled to remuneration in accordance with the 'Tarif Plus' pay scale. The conditions for the so-called notional promotion claim pursuant to Section 78 Sentence 2 Works Constitution Act in conjunction with Section 611a (2) German Civil Code were met. A notional promotion claim arises, where a works council



member successfully applies for a post and declines it solely on the basis of their works council activities. This occurred when the plaintiff turned down the post of press spokesperson offered to him. Nor did the promotion result in any impermissible preferential treatment of the plaintiff within the meaning of Section 78 Sentence 2 Works Constitution Act. Taking into account the specialist seminars he attended and the management licence he obtained when filling the post was permissible, as these were qualifications that were in fact relevant to the post. The fact that the qualifications were acquired whilst he was in the works council did not preclude them from being taken into account.

Our commentary

The court distinguishes between knowledge that is solely an expression of the performance of official duties, for example negotiating on an equal footing with board members and managers or being involved in complex corporate decision-making processes, the consideration of which would constitute impermissible favouritism, and those skills that reflect the individual qualifications of the works council member, such as attending seminars and training courses or completing further training not related to their office. The distinguishing criteria must always be taken into account in promotion decisions: in the event of a correction to remuneration or the withdrawal of an offer, the employer always bears the burden of proof to demonstrate that the works council member is being unduly favoured by the promotion.

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Equal pay claim: relevance of the volume of working hours

In an equal pay claim, employees must specifically set out the gross hourly wage they were paid and why their role is the same or equivalent to that of the comparator. General references are not sufficient for this purpose.

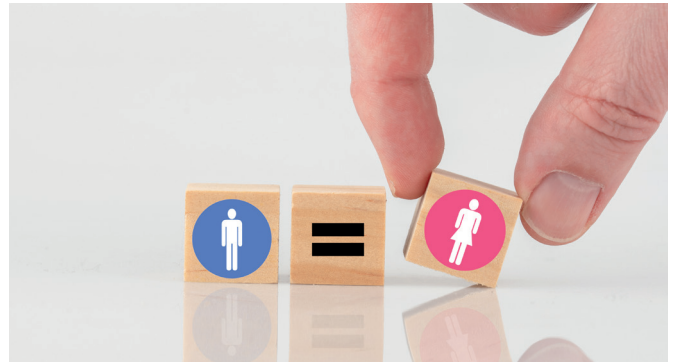
Federal Labour Court, decision of 23 October 2025 – 8 AZR 269/24

The case

The plaintiff was employed as a veterinary surgeon at her father's veterinary clinic. Together with her brother, who also worked at the clinic, she was listed on the clinic's website under the heading 'Clinic Management'. Whilst her brother received a gross basic salary of EUR 7,200.00, the plaintiff received only EUR 3,900.00 gross. By means of a staged claim, the plaintiff first sought information on the gross hourly rates of all male vets at the clinic and subsequently claimed compensation for a gender-based pay gap for the period from 2020 to early 2022. She argued that she had held the same position and worked full-time, just like her brother. The defendant clinic countered that the plaintiff had worked only 20 hours per week during the period in question. Furthermore, she had been able to take time off at any time, which she had regularly done to look after her children. Her brother, by contrast, had worked full-time and taken on managerial responsibilities. The Labour Court and the Higher Labour Court dismissed the claim and the appeal respectively.

The decision

Similarly, the Federal Labour Court dismissed the plaintiff's appeal. There was no entitlement to equal pay, as the plaintiff had failed to demonstrate and prove that she had received lower pay than a male colleague for the same or equivalent work. Although Section 2 (2) Sentence 1 Remuneration Transparency Act (Entgelttransparenzgesetz – EntgTranspG) refers to the presumption of causality under Section 22 General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG), the principles of EU law must be observed when applying national provisions. In order to trigger the presumption under Section 22 General Equal Treatment Act, the plaintiff must provide specific evidence that she was paid less than a male colleague performing the



same or equivalent work. When assessing whether a pay disparity exists, and where weekly working hours differ, the gross hourly wage must first be determined and compared. However, in the absence of sufficiently specific evidence from the plaintiff regarding the amount of her gross hourly wage, a pay comparison was not possible in this case. Although the plaintiff had argued that she had worked full-time, this had been sufficiently contested by the defendant. Finally, the plaintiff had likewise failed to demonstrate that her brother's role was comparable to her own, as there was no corresponding evidence as to which specific managerial tasks she had undertaken.

Our commentary

With this decision, the Federal Labour Court remains consistent with its previous case law on the Remuneration Transparency Act and the General Equal Treatment Act, according to which pay discrimination is only presumed if a lower salary is actually paid for the same or equivalent work. The decision clarifies the requirements regarding the burden of presentation and proof on the employees concerned and makes it clear that the statutory reversal of the burden of proof does not mean that plaintiffs can rely on vague assertions. Rather, a detailed and comprehensive statement of facts regarding actual working hours and the specific scope of duties is required, and, conversely, a substantiated challenge on the part of the employer is absolutely essential. Furthermore, a precise figure for the hourly wage is necessary in order to calculate the potential pay gap.

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Participation in strike actions supersedes an approved annual leave

Participation in a strike supersedes approved annual leave because, during this period, the main obligations under the employment contract are suspended. The annual leave entitlement that becomes available as a result must be taken within the statutory or (collective) contractual time limits in order not to lapse.

Higher Labour Court Saxony, decision of 29 January 2026 – 4 SLa 290/24

The case

The plaintiff has been employed by the defendant, which operates a recycling company, since 2021. At the end of 2023, the plaintiff applied for leave from 11 to 15 December 2023, which the defendant granted. From 8 November 2023, the plaintiff took part in a lawful strike at the defendant's premises, which continued without interruption until May 2024. During this period, the plaintiff did not perform any work and received strike pay. As the defendant did not pay him holiday pay for the requested holiday period, he claimed this in February 2024 and brought an action in mid-May 2024. In his view, he is entitled to holiday pay despite having taken part in the strike. The Labour Court dismissed the claim. In his appeal, the plaintiff added a subsidiary claim requesting that he be granted five days' annual leave.

The decision

The Higher Labour Court Saxony dismissed the plaintiff's appeal. There was no entitlement to holiday pay for the period from 11 to 15 December 2023 under Sections 1 and 11 Federal Leave Act (Bundesurlaubsgesetz – BUrlG) in conjunction with Section 611a (2) German Civil Code (Bürgerliches Gesetzbuch – BGB). It was true that the plaintiff had been released from his duty to work by the defendant for this period. However, participation in the strike superseded the holiday that had already been granted, including the declaration of exemption. Participation in industrial action suspended the obligation to work. This was contrary to the

purpose of the holiday, which is exemption for the purposes of rest and recuperation, and which cannot be replaced by an exemption resulting from a strike. The declaration of exemption for annual leave can only result in the forfeiture of the entitlement to annual leave if and to the extent that the employee is obliged to perform work during the period of exemption. However, if he takes part in a strike, this takes the place of the approved annual leave. On this basis, the plaintiff's obligation to work was suspended from 8 November 2023 due to his participation in the strike, as from that date he was continuously involved in the industrial action at the defendant's site. The declaration of leave previously issued thus became null and void, meaning that the plaintiff was not entitled to holiday pay for the period in dispute. Finally, the plaintiff is also not entitled to five days' recreational leave, as this entitlement had lapsed by 31 March 2024 at the latest, in accordance with Section 7 (3) Federal Leave Act. By that date, the plaintiff had not taken his (remaining annual) leave, as he was continuously involved in the strike action until May 2024.

Our commentary

In a mirroring decision mirroring, the Federal Labour Court has ruled that approved leave is not interrupted solely by the outbreak of a strike. Just as an employee is free to choose not to take part in a strike, they may commence or continue a holiday that has already been approved despite an ongoing strike (decision of 9 February 1982 – 1 AZR 567/79). Furthermore, the Federal Labour Court ruled that, where a holiday has already commenced, it is to be assumed that no strike will take place and the employee's entitlement to pay remains in force. However, in this case, the employee may terminate the holiday by unilateral 'revocation'. Participation in a strike that follows constitutes such a declaration of termination (decision of 26 July 2005 – 1 AZR 133/04). If a strike begins before the intended holiday and the employee then takes part in the strike during the planned holiday period, this is all the more to be understood as a revocation of their holiday. The employee is then responsible for applying for and taking the holiday thus 'reinstated' in good time before it expires. Provided the employer fulfils their obligations to cooperate, the holiday expires at the end of the statutory or (collective) agreement-regulated periods.

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Reduction of a bonus due to days absent caused by strike actions

A provision in a works agreement under which a bonus payment is reduced once a certain number of days of absence has been reached may validly also apply to absences due to strike actions, provided that the provision generally relates to absences, subject to certain exceptions.

Higher Labour Court Nuremberg, decision of 15 December 2025 – 1 SLa 158/25

The case

The plaintiff is employed by the defendant employer as a delivery driver. The employment relationship is governed by a works agreement which regulates the distribution of an annual bonus payment exceeding the collective agreement rate. The 2023 version relevant to the present proceedings contained a reduction clause stipulating that, in the event of individual absence exceeding four days, the payment would be reduced by 1/60 for each day of absence from the fifth day onwards, with 'absence' being defined as any absence from work with the exception of holiday days, flexitime days, quarantine days and time off work granted under the collective agreement. Furthermore, days of absence due to illness were not to result in a reduction if they were attributable to a recognised occupational disease or an accident at work. Company agreements with almost identical wording had already been concluded in 2018, 2019, 2021 and 2022. In 2023, the plaintiff had 77 days of absence, 64 of which were due to participation in strike action. Consequently, the defendant refused to grant him a special payment in excess of the collective agreement,



citing the reduction clause. He then brought legal proceedings to claim the payment. The Labour Court dismissed the claim.

The decision

The Higher Labour Court Nuremberg also dismissed the plaintiff's appeal. It held that the plaintiff was not entitled to the special payment because the defendant was justified in reducing it on account of his days of absence due to strike action. The wording of the reduction provision alone showed that the additional special payment could be reduced in all cases of absence not expressly excluded. By contrast, the exceptions set out therein were clearly exhaustive, whilst absences due to industrial action were explicitly not included. The reduction provision does not, therefore, contravene Section 75 (1) Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) in conjunction with Article 9 (3) German Constitution (Grundgesetz – GG), as it does not differentiate on the basis of trade union membership and is not intended to influence the willingness to strike. The reduction is intended to apply to *any* absence from work, not merely to days of absence due to strike action. For the same reasons, there is likewise no breach of Section 612a German Civil Code (Bürgerliches Gesetzbuch – BGB) . The appeal was allowed and lodged (Ref. No. at the Federal Labour Court: 1 AZR 19/26)

Our commentary

The Federal Labour Court has already ruled that participation in a strike may reduce entitlement to special payments if the assessment is generally based on periods during which the employment relationship is suspended (decision of 13 February 2007 – 9 AZR 374/06). Similarly, a provision linking a bonus to the absence of periods of incapacity for work and unpaid absences does not constitute an unlawful disciplinary measure under Section 612a German Civil Code in the event of a loss of bonus due to participation in a strike (Federal Labour Court, decision of 31 October 1995 – 1 AZR 217/95). The parties within the undertaking are free to exclude strike-related absences from a reduction scheme, just as the collective bargaining parties may agree that the employment relationship is not deemed to be suspended as a result of participation in a strike, either generally or in relation to bonuses.

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Whistleblower protection and the right to continued employment in the event of dismissal during the first six months of employment

Protection against reprisals under Section 36 Act for the Better Protection of Whistleblowers (Hinweisgeberschutzgesetz – HinSchG) applies to dismissals only where there is a causal link with the report.

Federal Labour Court, decision of 4 December 2025 – 2 AZR 51/25

The case

The plaintiff, an employee, had been working in the field for less than six months for the defendant, a company that distributes medicines and pharmaceutical chemicals. In September 2023, the plaintiff visited a pharmacy with his line manager. As the owner was unable, for technical reasons, to sign on the line manager's tablet to finalise a transaction, the line manager himself signed the consent form for future contact after the visit had ended and in the absence of the pharmacist. That very evening, the manager communicated internally that the plaintiff's dismissal should be prepared. A few days later, the plaintiff reported the irregularities surrounding the signing internally to the defendant's works council and compliance department. During the hearing on the dismissal, the works council expressed its objection. The plaintiff further argued that the dismissal was based on the reported compliance breach and was invalid as a reprisal under Section 36 Act for the Better Protection of Whistleblowers, whilst the defendant denied any causal link. The lower courts dismissed the action for protection against unfair dismissal and, respectively, the appeal.

The decision

The Federal Labour Court also declared the dismissal to be valid and ruled out any breach of a prohibitive provision due to Section 134 German Civil Code (Bürgerliches Gesetzbuch – BGB). The prohibition on reprisals under Section 36 Act for the Better Protection of Whistleblowers also covers dismissals of whistleblowers. Given the chronological sequence of events – the report was made prior to the dismissal – the

judges also presumed that such reprisal had taken place within the meaning of Section 3 (6) and Section 36 (2) Act for the Better Protection of Whistleblowers. However, the defendant had succeeded in rebutting this presumption, as the line manager had already initiated the dismissal process before the report was submitted. The protection afforded by the Act does not take effect merely upon knowledge of an incident, but only upon the whistleblower's actual report. The mere temporal proximity is not sufficient to presume retaliation if other plausible reasons exist. Furthermore, the Federal Labour Court ruled out the plaintiff's entitlement to wages for delay in acceptance. In particular, such an entitlement does not arise from Section 102 (5) Works Constitution Act (Betriebsverfassungsgesetz – BetrVG). This specific right to continued employment allows the employment relationship to continue until the dismissal dispute is finally resolved, but does not apply in the case of dismissal during the first six months of employment: for systematic and historical reasons, the link between objection and social justification is inherent in the provision – and this is relevant only within the scope of the Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz – KSchG).

Our commentary

The decision constitutes one of the first decisions by the Federal Labour Court on the Act for the Better Protection of Whistleblowers and clarifies the conditions and consequences of Section 36 of the Act. Protection for whistleblowers only takes effect upon the actual reporting of the matter, not merely upon knowledge of it or an internal decision to report it. The Federal Labour Court further confirms that the special right to continued employment under Section 102 (5) Works Constitution Act exists only within the scope of the Protection Against Unfair Dismissal Act. In small businesses or in the case of dismissals during the six months of employment, however, it does not apply. Employers therefore bear a lower financial burden in such cases, as continued employment is only considered on the basis of the general right to continued employment – and this provides for remuneration only for work actually performed.

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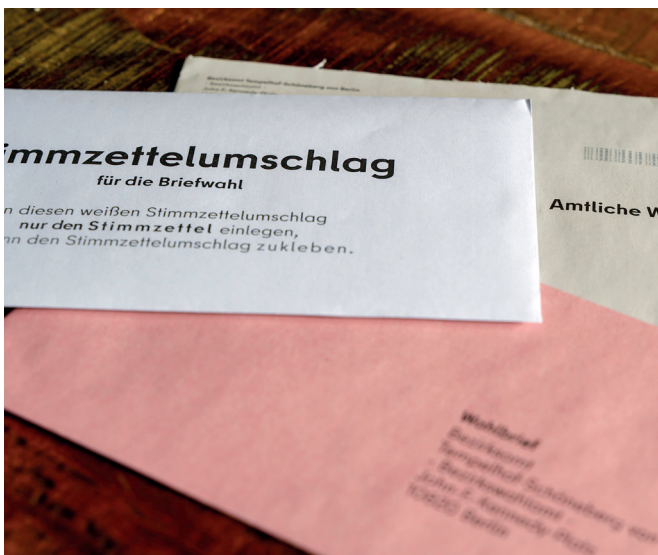
No declaration of the invalidity of outdated works council elections

There is no legal interest in challenging a works council election if the contested works council has resigned and a new election has been held. The challenge to the election is then inadmissible.

Federal Labour Court, decision of 4 March 2026 – 7 ABR 37/24

The case

In a 2022 works council election, the election committee had declared a list of candidates invalid. Following the announcement of the election result on 24 May 2022, the candidates on this list challenged the election. The challenge was successful both before the Labour Court and the Higher Labour Court. The employer and the works council lodged an appeal against the Higher Labour Court's decision. During the appeal proceedings, the works council resigned and a new election was held. The election result was announced whilst the appeal proceedings were still ongoing.



The decision

The Federal Labour Court upheld the appeals lodged by the employer and the works council. Following the resignation of the works council and the announcement of the results of the new election, the legal interest in challenging the 2022 election had ceased to exist, as the court's decision could no longer have any impact on the parties involved. In election challenge proceedings, the court declares a works council election invalid with effect for the future. If the works council whose election is being challenged no longer exists, the election challenge becomes moot. The original application to challenge the election had therefore become inadmissible. Furthermore, an interest in a declaratory judgment regarding the continuation of the election, analogous to Section 113 (1) Sentence 4 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung – VwGO), was ruled out. There was no legally protected interest in the mere declaration that a previous works council election had been invalid.

Our commentary

A works council election may only be challenged on the grounds of errors which could have affected the election result. As a matter of principle, according to the present decision, there is no legally protected interest in having errors in an election procedure declared where such errors can no longer have any effect because the works council is no longer in office. This is in line with the established view of the Federal Labour Court, according to which a specific existing legal relationship must be at issue. Clarifying mere elements of a legal relationship or preliminary legal questions would amount to drawing up only a legal opinion. The courts are precluded from doing so (see, for example, Federal Labour Court, decision of 4 December 2013 – 7 ABR 7/12).

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Involvement of the works council in changes to the remuneration scheme and potential subsequent reclassification

The works council's right to be consulted is triggered merely by the objective possibility of a different (re-)classification as a result of an amendment to the collective agreement or to the remuneration scheme applicable within the undertaking.

**Federal Labour Court, decision of 25 November 2025
– 1 ABR 43/24**

The case

The employment relationships at the employer are governed by the Tariff Agreement for Public Employees TVöD/VKA. Following a transfer of undertaking, the applicant works council was newly elected. Following structural changes, the works council demanded that the employer review the pay grading of 21 employees, seek its consent in accordance with Section 99 (1) Sentence 1 Act (Betriebsverfassungsgesetz - BetrVG) and – in the event of a significant refusal to grant consent – initiate a procedure to replace consent under Section 99 (4) Works Constitution Act, after Amendment No. 19 to the Tariff Agreement for Public Employees had introduced new examples of duties for certain pay grades in mid-2022. However, the employer did not involve the works council nor did it initiate any approval procedure, as it considered a review to be unnecessary because, in its view, the job characteristics of the pay group had not changed



significantly. Both the Labour Court and the Higher Labour Court dismissed the works council's corresponding applications.

The decision

Meanwhile, the Federal Labour Court upheld the works council's appeal. The employer's duty to review under Section 99 (1) Sentence 1 Works Constitution Act does not only apply once there has actually been a change in the job, but already when changes to a collective agreement or internal remuneration regulations objectively open up the possibility of a different pay grade classification. The mere addition of new examples of duties – for instance, through an amended collective agreement as in this case – already obliges the employer to carry out a review. Whether a different pay group actually results is irrelevant to the duty to review and to the triggering of the works council's right to be consulted under Section 99 (1) Sentence 1 Works Constitution Act. Furthermore, the employer has no right of preliminary assessment to involve the works council only in the event of a definite change to the pay grade. The sole decisive factor is whether a different pay grade appears objectively possible.

Our commentary

The Federal Labour Court highlights the far-reaching significance of the works council's right to be consulted in the event of reclassifications and emphasises the employer's duty to take proactive steps when changes are made to a remuneration scheme. Employers should initiate the approval procedure under Section 99 (1) Sentence 1 Works Constitution Act without delay as soon as collective agreement or internal changes to remuneration structures objectively give rise to the possibility of deviating job classifications or reclassifications. Even new examples of job roles set out in collective agreements may trigger the employer's duty to review. If the works council is not consulted, it may seek a court order to enforce both the employer's decision on job classification and the initiation of consent and substitute consent procedures, which may lead to considerable delays and costs.

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Rejection and modification of fixed-term part-time arrangements

Part-time models under collective agreements and fixed-term reductions in working hours do not affect the statutory entitlement to a permanent reduction in working hours under Section 8 Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz – TzBfG). Employers cannot reject requests for part-time work by making general references to staff shortages or seasonal fluctuations, but must set out operational reasons in concrete terms.

Higher Labour Court Cologne, decision of 19 February 2026 – 8 SLa 264/25

The case

The plaintiff is employed as a flight attendant by the defendant employer. His working hours are permanently reduced under a collective agreement part-time model. In addition, a further reduction in working hours under the collective agreement applied from 1 January 2024 to 31 December 2025. In May 2024, the plaintiff applied for a further indefinite reduction in his working hours with effect from 1 January 2025 pursuant to Section 8 Part-Time and Fixed-Term Employment Act. The employer rejected the application, citing operational reasons, seasonal fluctuations and staff shortages, without providing a

specific forecast for the plaintiff's area of deployment. The Labour Court upheld the subsequent claim seeking a declaration of the plaintiff's entitlement to the reduction in working hours.

The decision

The defendant's appeal before the Higher Labour Court Cologne was unsuccessful. The court upheld the plaintiff's entitlement to a permanent reduction in working hours under Section 8 Part-Time and Fixed-Term Employment Act. The collective agreement-based reduction in working hours, which was limited until the end of 2025, did not preclude this, as only the extent of the working hours – and not the employment relationship itself – had been limited in duration. Nor did the waiting period under Section 8 (6) Part-Time and Fixed-Term Employment Act apply. The previous reductions in working hours were based exclusively on collective agreements and not on the exercise of statutory part-time entitlements. The application was therefore to be regarded as the first exercise of the statutory entitlement. There were no grounds for refusal under the collective agreement. Furthermore, the seasonal fluctuations and staff shortages cited were not sufficient to constitute operational reasons within the meaning of Section 8 (4) Part-Time and Fixed-Term Employment Act. A specific forecast of staffing requirements and capacities in the plaintiff's area of operation was required – general or cross-site information was not sufficient for this purpose.

Our commentary

The ruling makes it clear that the statutory right to part-time work is independent of collective agreement-based part-time models. Reductions in working hours under a collective agreement do not result in the exhaustion of the statutory right nor in the suspension period under Section 8 (6) Part-Time and Fixed-Term Employment Act. If a reduction is also to be regarded as the exercise of a statutory right, this must be expressly documented. Employers should therefore record whether a reduction in working hours is based on a collective agreement or on a statutory entitlement. Furthermore, the decision confirms the high standards required for an employer's grounds for refusal: general references to staff shortages, seasonal peaks or organisational plans are not sufficient.

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A frequent plaintiff is not yet a so-called AGG hopper

The presumption of discrimination in job advertisements is not rebutted merely by the fact that an applicant uses a standardised cover letter and lives approximately 170 to 200 km from the place of work. Proof of an abuse of rights in the context of discriminatory job advertisements requires more substantial evidence.

Higher Labour Court Hessen, decision of 26 January 2026 – 7 SLa 435/25

The case

The defendant employer published an advertisement on the job platform 'Indeed' with the title "Commercial Assistant/Office Clerk/Secretary" for just females in German, whilst a gender-neutral suffix ("m/f/d") was missing. The plaintiff, who is male and has completed an apprenticeship as an industrial clerk, applied for the post and was rejected. He subsequently claimed compensation on the grounds of direct discrimination on the basis of sex under Section 15 (2) General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG). The employer countered that the plaintiff was a "AGG hopper" who operated a business model centred on bringing compensation claims. It referred, amongst other things, to several proceedings brought by the plaintiff, a standardised application letter, the distance of around 170 to 200 km to the place of work, and a lack of information regarding the plaintiff's mobility. The Labour Court awarded the plaintiff compensation of EUR 4,500.00.

The decision

The Higher Labour Court Hessen upheld the decision. It found that there had been direct discrimination on the grounds of sex. The job advertisement, which was worded in a feminine manner, contravened the requirement for gender-neutral job advertisements (Section 11 General Equal Treatment Act) and constituted an indication, within the meaning of Section 22 General Equal Treatment Act, of direct discrimination. This led directly to a reversal of the burden of proof: the defendant was required to demonstrate and prove

that there had been no breach of the prohibition on discrimination. In the present case, the defendant had failed to rebut the presumption because it could not demonstrate that the decision to fill the post had been made on the basis of an objective, standardised recruitment process conducted in accordance with specific decision-making criteria. The fact that other job advertisements were worded neutrally was not sufficient – nor was the fact that the post was ultimately filled by a man.

Furthermore, an abuse of rights would only be established if the applicant were not making a genuine effort to secure the post, but were instead using their applicant status solely to generate claims for compensation. The burden of proof in this regard lies with the employer. In the present case, a mere overall assessment was not sufficient to support the defence of abuse of rights. It could not be proven that the plaintiff had acted in a business-like manner, as there were no reliable indications of systematic and purposeful behaviour.

Our commentary

The ruling highlights two aspects: Firstly, the job title "employee/office clerk/secretary", formulated just for females in German, is sufficient to shift the burden of proof under Section 22 General Equal Treatment Act onto the employer. If the employer cannot demonstrate that the specific conduct of the recruitment process is based on objective, non-discriminatory decision-making criteria, this presumption can hardly be rebutted in practice. Secondly, the Higher Labour Court makes it clear that a frequent plaintiff is not automatically an "AGG hopper". What is required is a business model substantiated by facts – not merely the suspicion that someone makes a living from rejection letters in order to claim compensation. Employers should therefore, as a matter of principle, ensure that their recruitment processes – from the job advertisement right through to the rejection letter – are consistently in compliance with the General Equal Treatment Act.

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Office staff for the works council despite technical alternatives

The works council's entitlement to the necessary office staff is not superseded by ongoing digitalisation and artificial intelligence. However, these factors do increase the burden of proof regarding the necessity of such staff.

Higher Labour Court Schleswig-Holstein, decision of 25 September 2025 – 5 TaBV 6/25

The case

The applicant works council demanded that the employer in question provide an office assistant for 42 hours per week due to a heavy workload. Although the council was already equipped with laptops and a smartphone, it argued that the workload was so high that simple office and organisational tasks had to be delegated to an office assistant. In support of its case, the works council submitted a list of delegable administrative and organisational tasks, including estimated time requirements. The employer considered this unnecessary and referred in particular to the availability of cost-effective software solutions. The Labour Court subsequently upheld the works council's application and ordered the employer to provide an administrative assistant for 27 hours per week. Both parties lodged an appeal.

The decision

The Higher Labour Court Schleswig-Holstein upheld the decision. Whilst modern technology may simplify office work, it does not replace office staff entirely. The works council is entitled to determine its own office organisation, but is constrained by the principle of necessity. From the perspective of an objective third party, the means chosen must be proportionate to the tasks involved and the costs incurred. The more technical options available, the more precisely the works council must explain why office staff are nevertheless required. For certain tasks, the court referred to



digital alternatives (e. g. electronic calendar management and a paperless office). Nevertheless, it recognised that taking minutes at meetings remains a labour-intensive task: dictation or speech recognition software is neither equally efficient nor cheaper, as the dictation must subsequently be laboriously edited by a person.

Our commentary

The works council's digital infrastructure plays an important role in assessing the necessity of office staff, but does not negate the right to such staff. Whilst the works council decides on the deployment of office staff, this discretion is not unlimited. This ruling makes it clear that a serious discussion between the works council and management regarding the necessity of office staff, in light of today's technical capabilities, is advisable. At the same time, it demonstrates that the need for office staff may change as a result of increasing digitalisation. Given the rapid developments in the field of AI, the question of necessity will have to be reassessed regularly in the near future.

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■ CURRENT DEVELOPMENTS IN PENSIONS

Breach of good faith in asserting a legally established claim to an occupational pension

In its decision of 25 November 2025 – 3 AZR 77/25, the Federal Labour Court clarified that, where special circumstances exist, a claim by a person entitled to a pension for the fulfilment of a commitment to provide occupational pension benefits in the form of a retirement pension may be met with the defence of an inadmissible exercise of rights.



Background

The plaintiff in the underlying case is an attorney who joined the defendant, a law firm – now in liquidation – as a partner in 1999 and received a pension commitment at that time. The sole shareholder of the defendant is an asset management civil law partnership (Gesellschaft bürgerlichen Rechts – GbR), in which the plaintiff and the other partners held shares. In addition, there was another GbR with the same membership (LV-GbR), which took out life insurance policies on the partners' lives to finance the pension commitments. The partnership's articles of association stipulated that the partners entitled to a pension were to bear the cost of the premiums for the reinsurance policies themselves. Following financial difficulties, the defendant revoked the plaintiff's pension commitment in 2007. The plaintiff brought an action against this decision, whereupon the Labour Court ruled that the defendant was obliged to pay the benefits to the plaintiff upon

the occurrence of the pension event. The decision became final. In order to enable the dissolution of the LV-GbR, the plaintiff and the other partners resolved to transfer the life insurance policies to the beneficiaries. Upon the expiry of the insurance policies taken out in the plaintiff's favour, he received insurance benefits amounting to approximately EUR 350,000.00. Having reached the age of 65, the plaintiff then brought an action, citing the final and binding judgment of the Labour Court, for the payment of a monthly old-age pension of approximately EUR 2,700.00. In the new proceeding, the Labour Court upheld the claim, whilst the Higher Labour Court partially upheld the defendant's appeal.

Assessment by the Federal Labour Court

The Federal Labour Court dismissed the plaintiff's appeal and clarified that the first decision of the Labour Court did not preclude the admissibility of the appeal, as it was based on

facts that were not yet available in the previous proceedings. It then confirmed the Higher Labour Court's assessment, according to which, on the grounds of good faith in the form of the prohibition of contradictory conduct, the plaintiff was precluded from demanding payment of the retirement pension. The plaintiff was aware that the life insurance policies taken out on his life were intended to fulfil the pension commitment. Following the payment, the defendant was entitled to rely on the fact that it would not be called upon (again) to pay pension benefits.

Implications

The decision demonstrates that the principles of good faith may also apply in similar cases within the field of occupational pension provision. Admittedly, in view of the purpose of the

pension scheme, there are (rightly) high thresholds for refusing to pay promised pension benefits. However, this can only apply if, and to the extent that, the pension beneficiary themselves acts in accordance with the law. There must be no scope for enrichment going beyond the purpose of the pension scheme in the event of flagrant abuse of rights. Employers should therefore consistently document, any advance payments made in anticipation of the actual pension benefit.

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■ INTERNATIONAL NEWSFLASH FROM UNYER

Luxembourg: Transferability of public holidays falling on non-working days

Unlike employees in many other European countries, private-sector employees in Luxembourg do not necessarily lose their entitlement to a public holiday simply because it falls on a non-working day.

If a statutory public holiday falls on a Sunday, the employee is entitled to a compensatory day off. The same applies where it falls on a “working day not worked” under the employee’s individual work schedule, for example a Saturday for an employee who normally works Monday to Friday.

As a rule, this compensatory rest must be taken in kind and within three months of the public holiday. It cannot simply be replaced by a cash payment at the employee’s request. Cash compensation is possible only in limited cases, such as where the employment relationship ends before a compensatory day for a Sunday public holiday can be taken.

For public holidays falling on a working day not worked, the three-month period is subject to specific flexibility: if service requirements prevent the leave from being taken within that period, it may still be taken until the end of the calendar year. For compensatory leave relating to public holidays in November or December, the leave may be taken during the first three months of the following year.

Where two statutory public holidays coincide on the same calendar day, the second holiday may also generate an additional compensatory day, depending on the employee’s work schedule and the circumstances.

In practice, Luxembourg employers should identify public holidays falling on Sundays, usual non-working days or overlapping dates, record the related compensatory entitlements, and ensure that employees are able to take them within the applicable deadlines.

By contrast, in Germany, a public holiday falling on a Sunday or on a day on which the employee would not normally have worked is generally not replaced by a statutory compensatory day off, unless more favourable rules apply under a collective agreement, employment contract or company practice.

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