



NEWSLETTER LABOR LAW

February 2025 | Edition 7



TOPICS

- | | |
|---|-------|
| ◆ Foreword | S. 1 |
| ◆ Labor law regulars' table / Trainings | S. 2 |
| ◆ General Equal Treatment Act (AGG) (Part 2) | S. 3 |
| ◆ Volunteer Program | S. 4 |
| ◆ No future discrimination against women working part-time during overtime payment | S. 5 |
| ◆ EU Labor law: Not an exotic subject for works and staff councils | S. 6 |
| ◆ Baden-Württemberg: New state agency for skilled labour immigration in Stuttgart and Karlsruhe | S. 8 |
| ◆ This & That | S. 10 |



New: [@kanzlei.wirlitsch](https://www.instagram.com/kanzlei.wirlitsch)



Dear readers,

Equal treatment at work - we're not thinking of stopping!

We are taking another look at equal treatment in the workplace and explore other exciting areas of application. Today's issue will have a special focus on women in part-time employment. Labor law is constantly changing, so it is worth staying one step ahead.

In this issue, you can expect interesting insights into current developments at European and national level, valuable tips for your daily work and answers to frequently asked questions from the field.

I hope you enjoy reading this issue and would be delighted to hear from you, including via our new Instagram account!

Best wishes from Konstanz

Michael D. Wirlitsch



REGULARS' TABLE LABOR LAW

Are you interested in discussing employment law issues in a small group? Then our Regulars' Table is just right for you!

The Regulars' Table takes place every three months at the end of the month.

In addition, we always discuss the latest case laws on a wide range of topics. The next regulars' tables will cover the following topics:

- ◆ Latest case: Freiburg cathedral choirmaster fights for his job
- ◆ Economic downturn makes dismissal for operational reasons a hot topic again
- ◆ What is meant by 'probationary dismissals'? Should the reasons for dismissal be communicated to the works council or to PR?

The next regulars' tables:

- ◆ **16.04.2025 at 18.00 Uhr in Freiburg,**
- ◆ **17.04.2025 at 19.00 Uhr in Singen,**
- ◆ **30.04.2025 at 19.00 Uhr via Zoom**

We look forward to welcoming you to our regulars' table. Please feel free to share this invitation with colleagues.

You will receive all further information about the venue with our separate invitation to the regulars' table or at

wirlitsch-arbeitsrecht.de

TRAINING LABOR LAW

Overview of the next training courses:

**Youth and trainee representation
Part I**

11./12.03.2025

**Rights and duties of staff
representatives Part I**

18./19.03.2025

**General Equal Treatment Act (AGG)
26./27.03.2025**

**Preparation of company agreements
01./02.04.2025**

**Labor law for interest representatives
(BR and PR) III**

**26. bis 28.05.2025
(Performance guarantee)**

All further information on the training courses can be found at

afb-bodensee.de

General Equal Treatment Act (AGG) (Part 2)

The previous article presented basic aspects of equal treatment in employment law. This is followed by further supplementary considerations which highlight additional perspectives and examples of application.

Other grounds of discrimination:

Belief and religious conviction (Article 3 (3) GG) / Religion (Article 1 AGG)

This article is intended to protect the freedom of faith, conscience and denomination. **Individuals should be able to align their behavior with the teachings of their faith or convictions without fear of discrimination.**

This also serves the legal objective of achieving a tolerant and non-discriminatory working environment. It is a requirement for the management of companies and authorities as well as the respective interest groups.



However, when the focus is on economic endeavours, the term "religion" cannot be used.

Worldview (§ 1 AGG)

The "worldview" is about inner-worldly connections. A worldview can thus be understood as a conscious secular value system that enables people or a community to live together beyond religious beliefs.

Political view (Art. 3 Abs. 3 GG)

The term 'political view' should be understood in a broad sense, encompassing beliefs about governmental and social processes.



The head of department and the staff councils are also protected by this article. The prohibition of party-political activity that applies to them (§ 2 para. 5 no. 1 BPersVG) does not therefore mean a general political neutralisation. Apart from § 2 para. 4 sentence 2 BPersVG the protection of political opinion and activity is also guaranteed by § 2 para. 5 sentence 2 BPersVG. This expressly states that the handling of collective bargaining, pay and social issues is not to be affected by the restriction.



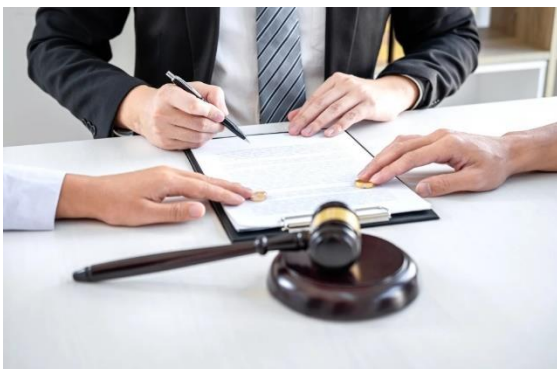
NEWSLETTER ARBEITSRECHT

In principle, trade union activity or recruitment is also protected (e.g. taking on trade union functions, announcing recruitment to the outside world by representing trade union positions in discussions or staff meetings).

Volunteer program - a socially responsible alternative

A volunteer program is an instrument that offers employees the opportunity to **voluntarily** end their employment, often combined with **financial incentives** and support for **professional reorientation**.

The BAG considers this to be a social plan. Its legal admissibility depends on whether the voluntary redundancy program constitutes a circumvention of the restrictions of the social plan. It is used, when a rapid reduction in the workforce is desired or when redundancies for operational reasons are excluded by a works agreement.



Procedure

With regard to the procedure, a distinction can be made between the open procedure, which is aimed at the entire workforce, and the selective procedure, in which the volunteer program is only aimed at certain employees (groups). The principle of double voluntariness applies in this case, according to which the employee must opt for the termination agreement and the employer must accept the request.

Turbo or sprinter bonuses

If the employee finds a new job before the end of the regular employment period, they will receive the outstanding salary payments as a bonus "on top", in form of a so-called turbo or sprinter bonus. Normally there is a deadline within which acceptance must be declared. The employee is able to react flexibly to job offers.



Role of the works council

The involvement of the works council is required in the event of an operational change in accordance with §111 BetrVG, particularly in the case of mass redundancies. In case of the dismissal of individual employees, there is initially no enforceable right of co-determination. In contrast to a dismissal, the employee voluntarily waives the right to be heard by the works council. At the same time, the works council has a right to information in accordance with §92 BetrVG. The works council can monitor the employer's compliance with the law by advising the departing employee and reviewing the procedure.

This is particularly important when it comes to compliance with the principle of equal treatment. For example, if the employer violates the notification



NEWSLETTER ARBEITSRECHT

obligation of Section 17 KSchG, the termination agreements are invalid. The works council is of considerable importance regarding the tolerance of the project. As the voice of the workforce, it has a particular interest in making the separation process as acceptable as possible. For this reason, the works council's positive attitude towards the program promotes its acceptance among the workforce.

Conclusion

The program allows for socially responsible staff reductions, given it offers transparent rules and financial incentives. In this context, the works council plays a key role. Even without the formal involvement of the works council, monitoring of the process is necessary and the involvement of the works council is of considerable importance for the acceptance among the workforce.



No future discrimination against female part-time employees with regard to overtime pay

Women work part-time significantly more often than men. The Federal Labor Court (BAG) has criticized the discrimination of many part-time employees with regard to overtime bonuses.

Collective bargaining regulations that require overtime pay to exceed the working hours of a full-time employee, regardless of individual working hours, are discriminatory and therefore generally invalid, as the BAG ruled in Erfurt on December 5, 2024.

The case

The case was brought in action by a nurse at the Kuratorium für Dialyse und Nierentransplantation (KfH), which provides dialysis services throughout Germany. The company's pay scale provides a 30 per cent bonus for overtime - but only if the total hours worked exceed those of a full-time employee.

By the end of March 2018, the plaintiff had accumulated almost 130 hours of overtime. She had not received any bonuses or corresponding time credits because she is employed part-time at 40 percent of a full-time position.

The BAG has now awarded her the time credits. The company's collective bargaining agreement discriminated against part-time employees. There were no objective reasons for this and the regulation was therefore inadmissible. As is often the case, it is mainly women who are affected, the regulation also violated the prohibition of discrimination against women.



What is the BAG's reasoning?

A provision in a collective agreement, which requires the regular working



NEWSLETTER ARBEITSRECHT

of a full-time employee in order to receive overtime pay, irrespective of the individual working hours, treats part-time employees less favourably than comparable full-time employees because of their part-time work. It violates the prohibition of discrimination against part-time employees (§ 4, Subsection 1, TzBfG) if unequal treatment is not justified by objective reasons. Without such reasons, indirect discrimination based on (female) sex under the General Equal Treatment Act (AGG) (§ 7(1) AGG) is often present if there are significantly more women than men in the affected part-time employee group.



The invalidity of the collective bargaining agreement's overtime bonus provision as a result of the infringement of Section 4(1) of the Law on Part-Time Working and Fixed-Term Contracts gives the plaintiff a claim to the additional time credit which she was entitled to. In addition, she was entitled to compensation under Section 15(2) of the AGG. The plaintiff also suffered indirect discrimination on grounds of sex as a result of the application of the collective agreement provision. Women (who are subject to the personal scope of the MTV) make up more than 90% of the group of part-time employees of the defendant. An amount of EUR 250.00 should be set as compensation.

This is both necessary and sufficient to compensate the plaintiff for the non-material damage caused by the indirect

gender discrimination and to have the necessary deterrent effect on the defendant.

The outcome

The plaintiff was awarded both the time credit she claimed for her work time as well as compensation of 250 euros for discrimination on the grounds of her gender.

Federal Labour Court, judgment of 5 December 2024 - 8 AZR 370/20 -.

Lower court: Hessian Higher Labour Court, judgment of 19 December 2019 - 5 Sa 436/19 -.

EU Labor law:

Not an exotic subject for works and staff councils

Basic knowledge of EU employment law is important for works and staff councils, also in order to be able to hold their own in discussions with employers.



EU labor law has a central influence on German (labor) law.

There are **European Union directives** that oblige national legislators to transpose European labor law into German labor law. In addition, there are **EU regulations** that apply directly and mandatorily without the need for further implementation by the member



NEWSLETTER ARBEITSRECHT

states, e.g. Germany.

The **case law of the European Court of Justice (ECJ)** is central to the understanding of German employment law, as the core statements of ECJ rulings are ultimately treated as legal principles in Germany and other member states.

Example: Around 35 years ago(!), the ECJ ruled in the **“Dekker” case** (RS C-177-88) that the non-employment of a pregnant applicant was *discriminatory solely because of her pregnancy*. The BAG (15.10.1992, 2 AZR 227/92) interpreted the decision of the ECJ to the effect that the employer's question about an existing pregnancy is generally inadmissible in a job interview.



Works and staff councils must be familiar with these basic principles of EU law and take the decisions of the ECJ to heart.

We are now starting a small series on EU labor law and will present current preliminary ruling proceedings (Art. 267 TFEU) as a reference from national courts for an understanding of EU law.

Please refer to the **Ramavic case (ECJ C-273/24)**, which deals with the question of what constitutes as working time for the

purposes of health and safety legislation, but not remuneration.



The main issue is the regulation of time periods of on-call duty in an office, which have to be assessed as to whether they can be considered as working time due to their narrow definition.

This is particularly important for works and staff councils because, if working time is involved, because this can have a direct impact on rest breaks and rest periods and § 87 para. 1 no. 2 and 3 BetrVG are also affected.

It is also important to understand that the works council is responsible for on-call times (see BAG of 21.12.1982 - 1 ABR 14/81), so that a distinction must be made between the definition of working time under works constitution law and the definition of working time under labor protection law from the Working Hours Act.

We discuss the compensation awarded to a fire department officer for alarm standby times by the Higher Administrative Court of North Rhine-Westphalia on 30.09.2024 (Ref.: 6 A 856/23).



NEWSLETTER ARBEITSRECHT

According to this decision, the following legal proposition can be established: *On-call duty can be "working time in the sense of working time law", but does not have to be; however, it is always "working time in the sense of remuneration law".*

The proceedings before the ECJ (C-420/24 Elie Radu) are another exciting question regarding the concept of working time. This concerns the question whether travel time should be classified as working time (see also VG Lüneburg of 02.05.2023 - 3a 146/22).



Baden-Württemberg: New state agency for skilled labor immigration in Stuttgart und Karlsruhe

Foreign skilled workers should be able to enter Baden-Württemberg more easily and quickly, thereby strengthening the state as a business location. The only question is when?

Progress is a snail's pace

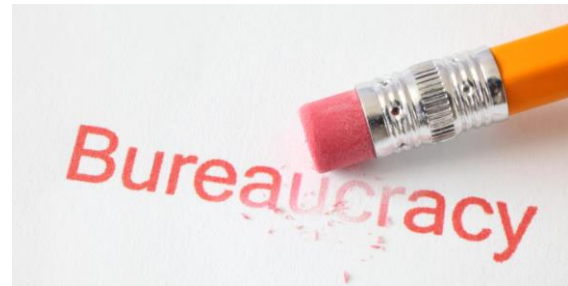
While 792 accelerated skilled worker procedures will be completed in 2021 and 1,748 in 2022, the number will rise to 2,838 in 2023. However, according to the IHK Skilled Worker Monitor of April 2025,



there will be a shortage of 910,000 skilled workers in Baden-Württemberg by 2035.

Bureaucratic planning: State agency as central contact point in Baden-Württemberg

The new state agency for skilled labor immigration will implement the accelerated skilled worker procedure, which aims to simplify the administrative procedure up to the entry of the foreign skilled worker by shortening the statutory processing times and avoiding friction losses between the involved authorities.



The state agency for skilled labor immigration is the central actor and involves all other involved authorities in the process, such as the Federal Employment Agency, professional recognition offices or foreign representations, so that the employer has only one point of contact.

The state agency for skilled labor immigration will be based at the regional councils in Karlsruhe and Stuttgart and will act as a single institution with a joint homepage as a "digital umbrella". Tasks are divided between the two regional councils according to professional groups: The Stuttgart Regional Council will be responsible for procedures related to health and care professions, and the Karlsruhe Regional Council will be responsible for all other procedures. The state agency for skilled labor immigration will work digitally.



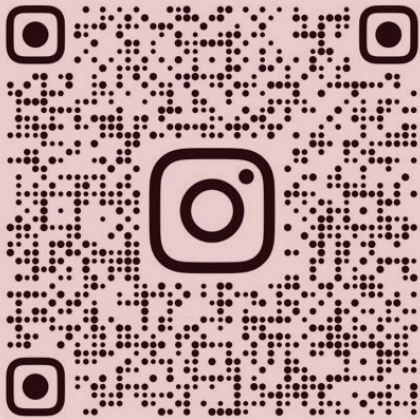
NEWSLETTER ARBEITSRECHT

The responsibility of the central authority will be in addition to that of the foreigners authorities.

The principle of hope: whether the new state agency will actually come into being in 2025 is unclear.



Baden-Württemberg's business community is counting on a quick start for the state's immigration office for skilled workers, which is currently being set up. "According to our current economic survey, the shortage of skilled workers is still one of the biggest business risks for companies in the state," said Claus Paal, head of the Stuttgart Region Chamber of Industry and Commerce. Many companies rely on the immigration of workers from third countries, but are regularly in despair of the complicated and lengthy procedures. The LZF is currently planning to create 55 new jobs, nine of which have already been filled.



If you haven't had enough, we recently launched an Instagram account.

Please follow for exciting posts!

@KANZLEI.WIRLITSCH



This & That

With every new year, there are also some changes in employment law. Here is an overview of that things are changing and what you need to bear in mind.

Minimum wage

From January 1, 2025, the statutory minimum wage and the mini-job limit will increase. The statutory minimum wage will amount to €12.82 per hour, while the earnings limit for mini-jobbers will increase to up to €556 in 2025, with the maximum working hours remaining at around 43 hours.

Additional increase in the minimum wage:

- Roofing: Wages and salaries will increase by 3.8 % on 1 December 2024, by 2.7 % on 1 October 2025 and by a further 3.4 % one year later
- Electrical trade: The minimum hourly wage will increase to €14.41 from 1 January 2025 (gradually rising to €16.10 by 2028)
- Building cleaners: the minimum wage will increase from 1 January 2025 (wage group 1: €14.25 in 2025; €15.00 in 2026/ skilled workers: €17.65 in 2025; €18.40 in 2026)



Compensation under the law on people with a severe disability

Private and public employers with at least 20 workplaces are legally obliged under Section 154 SGB IX to employ severely disabled people in at least 5% of their workplaces, otherwise they must pay a compensatory levy for each unfilled compulsory place in accordance with Section 160 SGB IX.

Training

For future apprentices (1.1.-31.12.2025) starting dual vocational training, new rates for minimum training allowances will be introduced.

- First year of apprenticeship: € 682 per month
- Second year of apprenticeship: € 805 per month
- Third year of apprenticeship: € 921 per month
- Fourth year of apprenticeship: at least € 955 per month

As part of the further training grant, young tradespeople who have completed their training with outstanding achievements or have achieved success at the German Championships and would like to continue their training have the opportunity to receive funding of up to 9,135 € over a period of three years. The increased funding also applies to scholarships already in progress.

Severance pay and tax law

Responsibility for the one-fifth rule (tax reduction) will be transferred from employers to the tax authorities from 2025. Employees who wish to continue to benefit from this tax advantage must therefore declare this in their tax return. This applies for the first time to wage tax deductions for 2025.

Professional validation:

People without a professional qualification but with many years of professional experience can have their skills recognised and receive a certificate (professional validation).

Requirements:

- at least 25 years old
- "cover at least the majority of the job description" with their skills
- have worked in the occupation for a certain period of time ("at least one and a half times the regular training period prescribed for the reference occupation.")



Basic tax-free allowance:

The basic tax-free allowance will be increased retrospectively by €180 to €11,784. This applies to this year's pay slips. The child allowance will be increased by €228 with retrospective effect.

Integration:

In future, refugees will be given the opportunity to complete a four to twelve-week internship in a company. The costs for this will be paid by the job centers. It is also planned that employers who release refugees from work to take part in a vocational language course will receive a wage subsidy from the employment agency.



General formalities:

- Issuing of employment references in electronic form under certain conditions, §109 III GewO
- Parental leave for children born after 1.5. 2025, in text form, §16 I 1 BEEG
- Automatic termination of employment on reaching standard retirement age, §41 SGB VI
- Entitlement to new employment documents after change of gender entry, §10 SBGG
- Formal simplifications in the conclusion of employment contracts through the 4th Bureaucracy Reduction Act -- in future, employers will also be able to provide information on the essential terms of employment contracts by e-mail. The Evidence Act has been amended.
- No co-determination right of the works council for mobile phone bans (BAG, decision of 17.10.2023, 1 ABR 24/22)



NEWSLETTER ARBEITSRECHT

WE INTRODUCE OURSELVES



Our specialization is in:

LABOR LAW (individual and collective labor law)

We have decades of experience in enforcing your employment rights with a sense of proportion and tenacity, even in the face of considerable opposition in and out of court.

COMPANY AND STAFF REPRESENTATION LAW

We represent works and staff councils, e.g. in the negotiation and enforcement of works and service agreements, restructuring and conciliation bodies, etc.

INTERNATIONAL BUSINESS LAW

If you have any questions regarding the cross-border deployment of workers, we can provide you with competent contacts who will ensure that your arrangements are legally compliant.

OFFICE KONSTANZ

Bruder-Klaus-Str. 54
78467 Konstanz
Tel. +49 7531 1316-0

OFFICE SINGEN

Julius-Bührer-Str. 4
78224 Singen
Tel. +49 152 37605953

OFFICE STUTTGART

Königstr. 80
70173 Stuttgart
Tel. +49 711 222946-443

IN COOPERATION WITH



ArbeitsrechtsForum
Bodensee AFB GmbH

EDUCATION AND TRAINING IN GERMAN AND EUROPEAN LABOR LAW

Your seminar provider for:

- ◆ **Works and staff councils**
- ◆ **Youth and trainee representatives**
- ◆ **Severely disabled persons' representatives**

You can register for the desired seminar at:
www.afb-bodensee.de

If you have any questions, please contact us on Tel. 07531 1316-0 or by E-Mail at
info@afb-bodensee.de