

European (& the GCC) Employment Law Update

Jurisdiction: Germany

Date: April 2018

Impact date	Development	Impact
24 August 2017	<p>BAG – 8 AZR 265/16</p> <p>Federal Labour Court ruled on forfeiture of right to object to business transfer</p>	<p>The Federal Labour Court had to decide whether an employee's objection to a transfer of business after almost seven years was valid.</p> <p>Under Sec. 613a Civil Code, an employee can object to a transfer of business within one month of being correctly notified about the transfer. If the notification was not correct or complete, the period for the objection does not start to run. However, the right to object can expire after a certain period of time and if there are specific circumstances in which the employer can be sure that an objection will no longer be made. Simply working for the new employer for several years is not sufficient.</p> <p>So far, there has been no exact timeline regarding when the right to object expires. The Federal Labour Court's decision of 24 August 2017 ruled that, if the employee was given the essential information about the transfer (date of transfer or planned transfer, subject of transfer, new employer) and continued to work for the new employer for over seven years, the right to object to the transfer is forfeited.</p> <p>The reason for this seven-year period, for which there are no indications in the law, is that this is halfway between the regular statutory limitation period (three years) and the maximum contestation period (10 years).</p> <p>In a sense, the Federal Labour Court took on the role of the legislator. Nevertheless, this decision may create more clarity in practice.</p>
8 November 2017	<p>BAG – 5 AZR 692/16</p> <p>Federal Labour Court ruled on the remuneration components of the minimum wage</p>	<p>The Federal Labour Court had to rule on a minimum wage claim.</p> <p>The employee claimed that he did not receive the statutory minimum wage because his fixed remuneration did not meet the minimum wage. However, the employee received a bonus for not being ill, a bonus for keeping the truck clean and a bonus for handling the collection of empties correctly. The</p>

		<p>fixed remuneration together with the bonus components reached the minimum wage.</p> <p>According to former judgments, what is relevant for the minimum wage is all remuneration components which are paid to honour the performance of the employee with the exception of payments which are made independently of performance or based on a specific statutory purpose.</p> <p>The Federal Labour Court ruled that the bonus for not being ill honours the performance of the employee. Also, keeping the truck clean is part of the employee's duties and therefore part of the reciprocal employment relationship. The same is true for the bonus for handling the collection of empties correctly. Therefore, the employee received the minimum wage in the relevant period of time.</p> <p>This decision is in accordance with former decisions of the Federal Labour Court regarding components of the minimum wage. However, the purpose of such bonus payments is doubtful. If the employee had not received them because, for example, he had not cleaned the truck, he could have claimed payment anyway, because the minimum wage was not reached.</p>
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