Deloitte.
Legal

Recent case law in labor law 2025

Decisions on the administration and termination of employment relationships and the use of external personnel explained in a compact format

October 1, 2025 | Deloitte Legal Webcast

MAKING AN IMPACT THAT MATTERS since 1845

Your speakers

Dr. Charlotte Sander, LL.M.
Deloitte Legal | Employment Law
Partner
Attorney at law | Specialist lawyer for employment law

Tel.: +49 511 307559 3
Email: csander@deloitte.de

Frauke Heudtlaß
Deloitte Legal | Employment Law
Partner
Attorney at Law

Tel.: +49 211 8772 2587
Email: fheudtlass@deloitte.de

Overview of topics

Working hours I Breaks

Determined in advance

Interruption of working time

Length depends on daily working hours

Periods of at least 15 minutes

Working hours I Breaks I BAG[1], judgment of February 12, 2025, 5 AZR 51/24

Facts

A part-time doctor regularly worked overtime. Break times were specified for full-time employees in a shop agreement. There was no provision for part-time employees. After breaks had been automatically deducted, the doctor demanded overtime pay for the deducted times as well.

Admissibility of the flat-rate break deduction

Permissible if the employer has properly specified or ordered breaks in advance and ensures that such breaks can actually be taken and are taken.

Decision

Since the employer tolerated the overtime, but did not specify break times for the part-time employee or monitored compliance, the flat-rate deduction was not permissible.

Practical tip

- If breaks are specified in terms of time, compliance must be monitored. The specification of break times should also cover all kinds of employment relationships.
- Nevertheless, caution is advised when making a flat-rate deduction for break times.
- Granting breaks is not only a matter of employee satisfaction, but also of occupational safety.

[1] The abbreviation "*BAG*" relates to the German Federal Labour Court.

Waiver of vacation I BAG, judgment of June 3, 2025, 9 AZR 104/24

Facts

A court settlement between the employer and the employee stipulated that outstanding vacation was "granted in kind." At the time the settlement was concluded, the notice period had not yet expired. The employee was unable to take the vacation by the end of the employment relationship due to illness.

There was no dispute about the actual amount of vacation during the course of the court proceedings.

Waiver of compensation claim in termination agreement/settlement

- It is not possible to waive the (statutory) vacation entitlement during the current employment relationship; Sec. 13 para. 1 sentence 3 Federal Vacation Act (*Bundesurlaubsgesetz, BUrlG*).
- In the event of termination that lies in the future: Waiver agreement invalid due to legal prohibition, Sec. 134 German Civil Code (*Bürgerliches Gesetzbuch, BGB*) in conjunction with Sec. 13 BUrlG.

Practical tip

- Comparisons of facts in court require a dispute regarding the subject matter.
- Undisputed (minimum) vacation entitlement should not be waived if the employment relationship has not yet ended.
- To the extent possible, the means of irrevocable leave should be used.
- Waiver possible, if the employment relationship has **ended** at the time of waiver, as it is a pure monetary claim.

Overtime allowance for part-time employees | BAG, judgment of December 5, 2024, 8 AZR 370/24 | ECJ[2], judgment of July 29, 2024, C-184/22 and C-185/22

A collective bargaining agreement provided for overtime allowance for hours worked in excess of the regular working hours of full-time employees. Part-time employees sued their employer and demanded overtime allowance for hours worked in excess of their contractually agreed working hours but below the regular working hours of full-time employees. The BAG referred the legal question to the ECJ for a preliminary ruling.

Facts

In the opinion of the ECJ, the collective bargaining agreement violates the European Directive on part-time work, the prohibition of indirect discrimination based on gender, and the European Equal Treatment Directive. As a result, the BAG ruled that part-time employees are entitled to overtime allowance as soon as they exceed their individually agreed working hours, and not only when they exceed the working hours of full-time employees.

Reasons for the decision

Employers who grant overtime allowance must review their bonus regulations for compatibility with the legal principles established by the ECJ and the BAG and, in case of doubt, stipulate in future that overtime allowance also applies to part-time employees (already) for overtime that exceeds their regular individual working hours.

Practical tip

See also: ECJ, judgment of July 3, 2025, C-268/24 - Unequal treatment of temporary teachers with regard to training allowances.

[2] The abbreviation "*ECJ*" relates to the European Court of Justice.

Remuneration I Expiry of virtual options I BAG, judgment of March 19, 2025, 10 AZR 67/24

01

The employee terminated the employment relationship by giving regular notice. The parties disputed "vested" option rights, which, in the employer's opinion, could be revoked after the employee's resignation.

02

The Federal Labor Court considered vested claims as financial consideration for work performed during the vesting period. This meant that the claims were protected by the principle of "work for remuneration" under Sec. 611a BGB and could not be revoked in the event of resignation.

03

- Offering participation programs from abroad.
- Structured in a shop agreement that is not subject to review under the German Law on Standard Terms and Conditions (*AGB-Kontrolle*).
- Extension of vesting periods.
- Restriction of the "bad leaver event," e.g., to extraordinary dismissal of the employee for conduct-related reasons.
- Buyback options.

No procedure according to SGB IX during the probationary period I BAG, judgment of April 3, 2025, 2 AZR 178/24

Facts of the case

The employment relationship of a severely disabled employee was terminated during the first six months of the employment relationship in the probationary period. There was no works council or representative body for severely disabled employees. The severely disabled employee contested his dismissal, arguing that it was invalid because, among other things, no prevention procedure had been carried out and he had not been offered an alternative job in accordance with the German Social Code No. 9 (SGB IX).

Reasons for the decision

The BAG dismissed the action for protection against dismissal. During the waiting period – and also in small businesses – i.e., outside the scope of the Unfair Dismissal Protection Act, no prevention procedure is to be carried out. Although the offer of alternative vacant positions must be examined regardless of the waiting period and the size of the company, this requires that the employee specifically identify vacant and suitable positions. The employee had not done so.

Practical tip

In 2024, the Cologne Regional Labor Court ruled that the employer's obligation to carry out a prevention procedure also applies during the first six months of employment and that failure to do so could give rise to the presumption that the dismissal was due to the disability. The BAG has appealed this decision, and it is expected that the Cologne Regional Labor Court's ruling will also be overturned in the pending appeal proceedings.

See also: ECJ, judgment of September 11, 2025, C-38/24 – Indirect discrimination, child with a disability.

Termination by registered mail | BAG, judgment of January 30, 2025, 2 AZR 68/24

Facts

The employer terminated an employee's employment relationship by registered mail. The employee denied in court that she had received the termination notice. As proof of receipt of the termination letter, the employer presented the proof of posting for the registered mail and an online shipment status. The employer was unable to present a delivery receipt.

Reasons for the decision

In the opinion of the BAG, the presentation of the proof of posting without the presentation of the proof of delivery does not constitute prima facie evidence of receipt by the recipient. Even a printout of the shipment history does not reveal who delivered the shipment and whether the procedure specified by Deutsche Post AG was followed.

Practical tip

In order to establish prima facie evidence of receipt of a registered letter delivered to a mailbox, the delivery receipt on which the delivery person documented the delivery to the mailbox must also be presented. The proof of posting alone is not sufficient for this purpose. In addition, it is advisable to name the delivery person indicated on the delivery receipt as a witness.

Restriction of the group privilege I BAG, judgment of November 12, 2024, 9 AZR 13/24

Facts

The employee claimed that an employment relationship had been established with the hiring company, as the group privilege did not apply due to his noumerous years of service for another group company.

Decision on the scope of the group privilege

- For the group privilege to apply it is not sufficient that the employment contract was concluded for a purpose other than the assignment of the employee to another company.
- It must also be regularly checked during the course of the employment relationship whether the employee is being employed for the purpose of temporary assignment.

Practical tip

- It is not advisable to make a hiring decision that is already linked to the planning stage of a temporary assignment/secondment.
- Periods of assignment/secondment should be replaced by periods at the parent company.
- The question of compliance with European law must also be kept in consideration.

Digital access of a trade union to the workplace I BAG, judgment of January 28, 2025, 1 AZR 33/24

Facts

The union responsible for collective bargaining demanded digital access to the employer's company communication tools. Many of the approximately 5,400 employees of the company work remotely. The union wanted to adapt its membership recruitment and information work to these working conditions and distribute advertising and information digitally. The employer rejected this, citing data protection, disruption to business operations, and interference with its freedom of enterprise, among other reasons.

Reasons for the decision

The BAG rejected the union's demands. According to the BAG, freedom of association also includes the right of a union to recruit members and to inform employees via digital communication channels. However, the demand for the disclosure of all work email addresses, access to a group-wide communication platform, and a permanent link on the employer's intranet homepage would interfere too greatly with the employer's property rights and freedom of enterprise.

Practical tip

As a result, this means for trade union activities that traditional means of access – in particular physical access to the workplace – continue to be considered sufficient. Trade unions must base digital contacts on data voluntarily provided by employees or use their own channels outside the employer's infrastructure.

See also: LAG Lower Saxony, decision of April 25, 2025, 17 TaBV 62/24 - Provision of material resources for works council members.

Q&A

Thank you very much

for your attention.

Deloitte Legal

Your contact

Dr. Charlotte Sander, LL.M.
Deloitte Legal | Employment Law
Partner
Attorney at law | Specialist lawyer for employment law

Tel.: +49 511 307559 3
Email: csander@deloitte.de

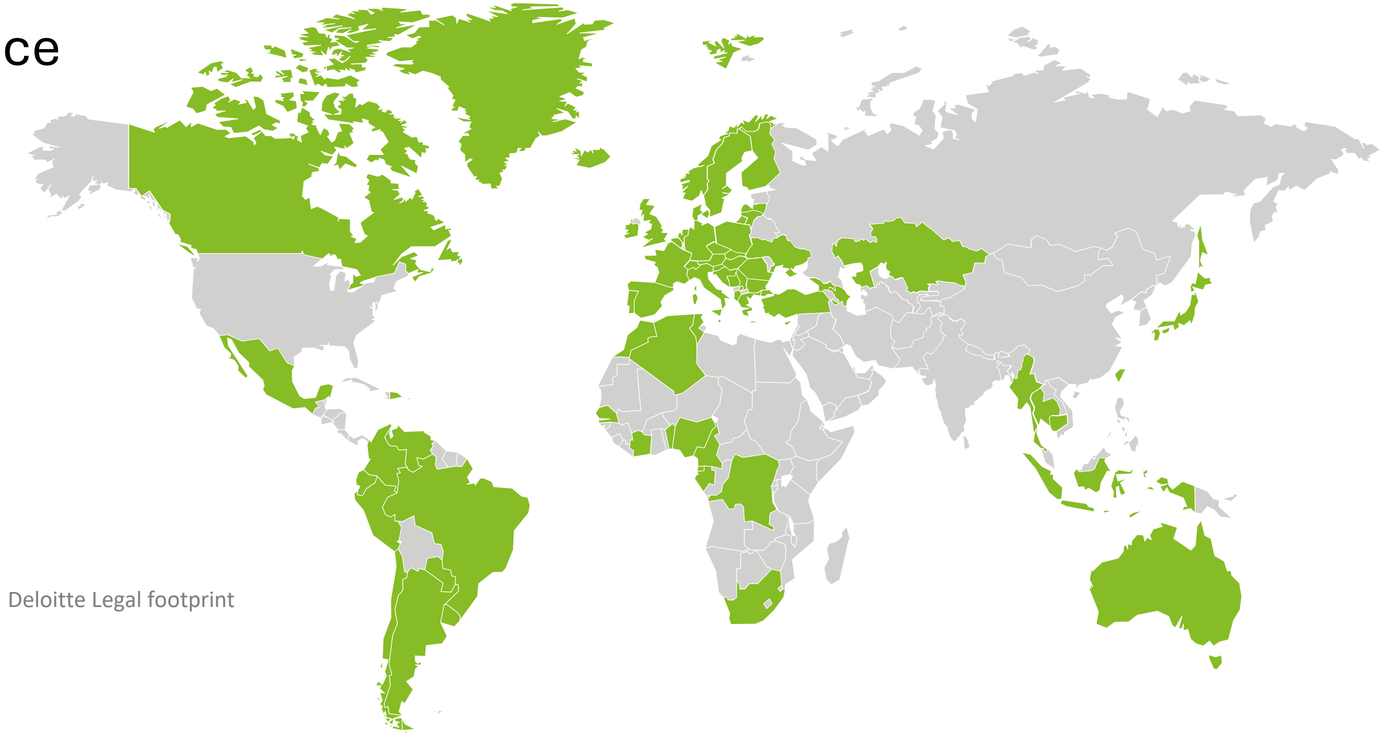
Frauke Heudtlaß
Deloitte Legal | Employment Law
Partner
Attorney at Law

Tel.: +49 211 8772 2587
Email: fheudtlass@deloitte.de

Deloitte Legal has a strong global presence

It can be very challenging to coordinate a large number of legal advisors around the world without losing sight of individual aspects.

As one of the world's leading legal advisory services, Deloitte Legal supports you in overcoming challenges and realizing your vision, acting as your central point of contact for your global legal advisory needs.



Deloitte Legal practices

1. Albania
2. Algeria
3. Argentina
4. Australia
5. Austria
6. Azerbaijan
7. Belgium
8. Benin
9. Bosnia
10. Brazil
11. Bulgaria
12. Cambodia
13. Cameroon
14. Canada
15. Chile
16. Colombia
17. Costa Rica
18. Croatia
19. Cyprus
20. Czech Republic
21. Democratic Republic of Congo
22. Denmark
23. Dominican Republic
24. Ecuador
25. El Salvador
26. Equatorial Guinea
27. Finland
28. France
29. Gabon
30. Georgia
31. Germany
32. Greece
33. Guatemala
34. Honduras
35. Hong Kong SAR, China
36. Hungary
37. Iceland
38. Indonesia
39. Ireland
40. Italy
41. Ivory Coast
42. Japan
43. Kazakhstan
44. Kosovo
45. Latvia
46. Lithuania
47. Malta
48. Mexico
49. Montenegro
50. Morocco
51. Myanmar
52. Netherlands
53. Nicaragua
54. Nigeria
55. Norway
56. Paraguay
57. Peru
58. Poland
59. Portugal
60. Romania
61. Senegal
62. Serbia
63. Singapore
64. Slovakia
65. Slovenia
66. South Africa
67. Spain
68. Sweden
69. Switzerland
70. Taiwan
71. Thailand
72. Tunisia
73. Turkey
74. Ukraine
75. Uruguay
76. United Kingdom
77. Venezuela

Deloitte Legal refers to the legal practices of the member firms of Deloitte Touche Tohmatsu Limited, their affiliates, or partner firms that provide legal services.

Deloitte refers to Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms, and their respective affiliated entities (collectively, the "Deloitte organization"). DTTL (also known as "Deloitte Global") and each of its member firms and their affiliates are legally separate and independent entities that cannot obligate or bind each other in relation to third parties. DTTL, each DTTL member firm, and affiliated entities are liable only for their own acts and omissions and not for those of the others. DTTL does not itself provide services to clients. For more information, see www.deloitte.com/de/UeberUns.

Deloitte provides industry-leading services in audit and assurance, tax, consulting, financial advisory, and risk advisory to nearly 90% of the Fortune Global 500® companies and thousands of private companies. Legal services are provided in Germany by Deloitte Legal. Our people deliver measurable, long-term results that help build public trust in capital markets, support our clients through change and growth, and pave the way to a stronger economy, a more equitable society, and a sustainable world. Deloitte builds on a history of more than 175 years and operates in more than 150 countries. Learn more about how Deloitte's approximately 457,000 employees live the mission of "making an impact that matters" every day: www.deloitte.com/de.

This publication contains general information only and neither Deloitte Legal Rechtsanwaltsgesellschaft mbH nor Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, nor their affiliated entities (collectively, the "Deloitte Organization") are providing professional services with this publication. This publication is not suitable for making business or financial decisions or taking action. You should seek advice from a qualified advisor in relation to your specific circumstances.

No representations, warranties or assurances (express or implied) are made as to the accuracy or completeness of the information in this publication, and neither DTTL nor its member firms, affiliates, employees or agents shall be liable or responsible for any loss or damage of any kind incurred directly or indirectly in connection with any person relying on this publication. DTTL and each of its member firms and affiliates are legally separate and independent entities.