Repayment Excluded? New Judgments on Employer Loans in the Case of Termination

INTRODUCTION

Time and again employers not only grant individual employees an advance on their salaries, but also grant employer loans - usually at low interest rates. These loans are almost always contingent on the continuation of the employment relationship. In the wake of a judgment by the Regional Labor Court of Hamm, employers should take the greatest care possible in those cases where a cut-off clause is in play. If an employer does not comply with certain rules, this may lead to an exclusion of the claim to repayment of the loan!

REGIONAL LABOR COURT HAMM JUDGMENT OF NOVEMBER 25, 2014, 14 SA 463/14

This judgment was occasioned by a seemingly innocuous case: An employee left his employment on March 31, 2013 as a result of his own resignation. What made this case unusual, however, was the employer loan that was valued at EUR 17,000.00 on the date of the termination of employment.

The grant of the loan was based on a separate agreement between the parties under the terms of which 6 % interest was charged on the loan, which was to be repaid in monthly installments as of February, 2013. In the event that the employment relationship terminated prior to the full redemption of the loan, however, the outstanding principle of the loan would become due in its full amount as of the employment relationship's termination date. At the same time, the parties had agreed to a cut-off clause in the employment contract under which all of the mutual claims of the parties under the employment relationship and those claims that stood in connection with the employment relationship would lapse if they were not asserted in writing within three months of their respective due dates.

The former employee did not make any payments on the principal after he left the company on March 31, 2013, but limited himself solely to making interest payments. Following the employer's written assertion of the claim, which did not take place until July 7, 2013 and thus outside of the cut-off period under the terms of contract, the employee also stopped making payment on the interest.

While the employer was granted a claim by the court of first instance to the repayment of the loan in accordance with the regular repayment schedule, the Regional Labor Court of Hamm ruled that the claim to the repayment of the loan in the full outstanding amount of EUR 17,000.00 had lapsed and that the employee thus did not have to repay the employer loan.

REASONING OF THE COURT

In its ruling and in keeping with the approach taken by the Federal Labor Court, the Judge of the Regional Labor Court Hamm first deemed the clause in the loan agreement under which the loan becomes immediately repayable in its full amount upon the termination of the employment relationship to be unreasonably onerous within the meaning of the core provision on preprinted terms and conditions of contract in Section 307 (1) sentence 1 German Civil Code and therefore void. The consequence of this would be that the employer could only demand installments and interest in accordance with the actual repayment schedule.

However, instead of focusing on the maturity of each individual payment on the principle and interest for the purpose of applying the exclusionary period under labor law, the court reached into a legal bag of tricks: It concluded from the principle that the employer, as the user of the general terms and conditions, was not permitted to invoke their invalidity, that, for the purpose of defining the date of maturity, which is connected to the three-month cut-off clause, one may not refer to the repayment schedule, but to the invalid clause, under the terms of which the outstanding principle of the loan was immediately repayable in its full amount on March 31, 2013.

Based on this, however, the employer had failed to assert its written claim to repayment in good time. For this reason, the former employee was not obliged to repay the loan and make the further interest payments.

OUR POINT OF VIEW

We take the liberty of questioning whether the Regional Labor Court Hamm has made a ruling here that will stand up to a legal test, and, moreover, on the following ground:

General terms and conditions of contract typically have the function of regulating collateral agreements (in the present case, in the form of the acceleration of the loan upon the termination of the employment relationship), which is why the full or partial invalidity of the collateral agreement will only concern the collateral agreement itself. The agreements reached on the main performance - this being the repayment schedule for the loan in the present case - will regularly remain unaffected by the invalidity of a collateral agreement (Clemenz/Kreft/Krause, AGB-Arbeitsrecht, Sec. 306 margin no. 14).

In our view, the repayment of the loan pursuant to the repayment schedule is the key factor for the cut-off clause in the employment contract with the consequence that the employer would be entitled to all of the individual interest payments and all of the payments on the principle, provided he asserted them in writing to the former employee by no later than within three months after their respective date of maturity.

OUTLOOK

In the meantime, the judgment of the Regional Labor Court Hamm has been appealed to the Federal Labor Court (File no.: 8 AZR 67/15). A clarifying judgment by the highest German labor court cannot be expected until the end of this year at the earliest.

Irrespective of how the judges of the Federal Labor Court will be ruling, employers should always take the greatest care possible regarding cut-off and settlement clauses when employment contracts are terminated. This not only applies in the case of employees who have been granted an employer loan, but also to a number of other possible situations, including advances on wages, overpayments of wages or in the case of possible damage claims against employees following a dereliction of duty. In such cases, not only the scope of the specific cut-off clause which is to be defined by interpretation in each case is of significance, but also the question of their validity (which is not always easy to answer), including the aspect of whether one is able, as an employer and the user of the general terms and conditions, to successfully invoke the possible defense of their invalidity.

If these efforts are not made or are not made until it is too late, the only possibility for recovery is to seek recourse to the labor courts. As illustrated by the case in Hamm, this occasionally results in unpleasant surprises.■

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