

Unlimited Vacation! – Expiration and Prescription of Claims to Vacation Only if Employees are Properly Informed

INTRODUCTION

As already reported in the daily papers, the Federal Labor Court handed down not one, but two new and important rulings on vacation law on December 20, 2022, which once more clearly underline the existing duties of employers in the context of granting time off for vacation.

PRESCRIPTION OF CLAIMS TO VACATION DAYS

It was already in keeping with the prior case law of the Federal Labor Court that claims to vacation days would only **expire** if the employer had complied with certain **duties to remind** employees of their vacation time and **demand** that it be taken (see our Client Newsletter **01/2019**). One of these new judgments of the Federal Labor Court of December 20, 2022 (File no. 9 AZR 266/20) now dealt with the question of the requirements under which the claim to statutory vacation is subject to **prescription** and whether the same principles apply. In the case at hand, an employee was claiming, upon the termination of her employment relationship, a total of 101 days of vacation from the previous years. The Federal Labor Court, in implementing a decision of the European Court of Justice of September 22, 2022 (File no. C-120/21) now decided that, although the claim to vacation days is generally subject to the statutory prescriptive period of three years, an interpretation of the law in compliance with the EU Directive demands that **this period does not commence until the end of the calendar year in which the employer has instructed the employee of their specific claim to vacation days, but after which the employee did not take their vacation upon their own free will**. In the matter under review, the employer had failed to provide this information, which is why the complaint ultimately succeeded before the Federal Labor Court.

EXPIRATION OF VACATION DAYS IN THE CASE OF LONG-TERM ILLNESS

In the second decision (file no. 9 AZR 245/19), the Federal Labor Court ruled, also upon implementation of legal rulings of the European Court of Justice, that a claim to vacation days from the year **in which an employee had actually been working at first but during which a long-term illness then set in** will similarly only expire after 15 months in accordance with the applicable case law if the employer has **com-**

plied with their duties to inform in the respective year prior to the start of the illness.

CONCLUSIONS

Both judgments make one thing clear: If an employer neglects their duties in connection with the statutory claim to vacation days to inform and demand that vacation be taken, they may invoke neither the **expiration of the claims nor the statute of limitations**, thus threatening the steady accumulation of claims to vacation days or monetary compensation. According to the Federal Labor Court, a notification by the employer to the employee at the beginning of the year is sufficient for compliance with this duty. In the notification, the employer should inform the employee in a verifiable form of how many days of vacation they have, request that they apply for vacation days in good time so that it can be taken during the current vacation year and instruct them of the consequences (threat of expiration) if this vacation is not taken in accordance with the request. Businesses should therefore ask themselves how this information/request should be designed and integrated into business processes as unbureaucratically as possible.

Please do not hesitate to contact us if you have questions concerning this topic. If you would like to be included on our mailing list of the subscribers to our free newsletter, please send us a brief **e-mail** with your request.

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