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1. CGZP: Incapacity to Collective Bargaining from the very Beginning

The *Christliche Gewerkschaft Zeitarbeit & PSA* (*CGZP* / Christian Union Temporary Work & PSA), founded December 11, 2002, never had any capacity to act as a party in collective bargaining (*Bundesarbeitsgericht* / German Federal Labor Court, May 23, 2012 - 1 AZB 58/11 and 1 AZB 67/11 and May 22, 2012 – 1 ABN 27/12). On December 14, 2010 - 1 ABR 19/10 - the Court had already stated the CGZP's incapacity for collective bargaining as of October 18, 2009 but it remained unclear whether this applied also to periods before that date (see CURRENT LAW III-2012 No. 1 and I-2012 No. 3). Thus, according to the latest decision of the Court additional social security contributions are also at stake for the periods before.

2. Revocation of private Car Use Due to Paid Leave of Absence

The clause: "*The employer reserves the right to revoke the private use of a company car, … in case the employee is suspended from work*", is valid, even it is pre-formulated by the employer (*Bundesarbeitsgericht* / German Federal Labor Court, March 3, 2012 - 5 AZR 651/10). The Court had no concerns from the formal point of view because according to the wording of the clause it is clear that it would also cover a revocation of the private use of the car. But also from the substantive law point of view the clause has been considered valid by the Court because a revocation of the private use of a car is not unreasonable in the event of a suspension from work.

3. Forwarding and Deleting of Business Emails: Termination without Notice?

A termination without notice is not necessarily justified just because an employee has forwarded a business email to his private mail-account and has deleted business emails due to the termination of his employment (*Landesarbeitsgericht Schleswig-Holstein* / State Labor Court of Schleswig-Holstein, January 12, 2012 – 5 Sa 269/11). The Court pointed out that in this specific case the forwarding happened only once and – more importantly – the employer himself had requested before that business emails should be forwarded to a private mobile phone account of the employee. Moreover, the deletion of the business emails on the business laptop happened on the occasion of the hand over due to the upcoming termination date of the employment. Thus, in this case not even the fact that the parties had initially excluded any private use of emails and had entered into a non-disclosure agreement would justify a termination without notice.

4. Age Discrimination by Non-Renewal of Managing Director's Employment Contract?

An age-related non-renewal of an employment contract is an unlawful age-related discrimination against a managing director at the age of 62 (*Bundesgerichtshof* / German Federal Court in Civil Matters, April 23, 2012 – II ZR 163/10). The Court hereby confirms an earlier decision of the *Oberlandesgericht Köln* / Court of Appeals in Cologne, July 9, 2010 – 18 U 196/09 (see CURRENT LAW 1/2011 No. 6). Only the exact amount of damages still remains to be determined.

5. No Damages for Managing Director of GmbH giving Notice?

If a managing director of a GmbH (*Gesellschaft mit begrenzter Haftung /* German Limited Liability Company) is dismissed from office by the shareholders, the managing director may terminate the underlying employment contract without notice but will lose his entitlement to salary and damages according to section 628 para 2 BGB (German Civil Code) at the same time according to some case law of the *Bundesgerichtshof* / German Federal Court in Civil Matters. However, the same Court has still not set a precedent regarding a case where the competences of a managing director are limited by the shareholders in breach with an underlying employment contract granting specific competences to the managing director. The Court has left this question explicitly open in a case initially decided by the *Oberlandesgericht Karlsruhe* / Court of Appeals in Karlsruhe (see CURRENT LAW 7/2011 No. 4) because it could not confirm any kind of material breach of contract as to the alleged limitation of the competences in question (*Bundesgerichtshof* / German Federal Court in Civil Matters, March 6, 2012 –II ZR 76/11).

6. Voting Restrictions for Partners of a Civil Law Partnership

A (managing-)partner of a *GbR* (*Gesellschaft bürgerlichen Rechts* / civil law partnership) is not entitled to vote on a partners' resolution about getting an expert's opinion in order to review the merits of an alleged claim against this specific partner (*Bundesgerichtshof* / German Federal Court in Civil Matters, February 7, 2012 – II ZR 230/09). The Court confirms that it has already recognized voting restrictions for individual partners with regard to the principle that no one should be his own judge in the following events: general approval of management, assertion of claims, filing a law suit, waiver of claims. According to the Court this applies also to a vote on getting an expert's opinion in order to review the merits of an alleged claim. Otherwise the respective partner could try to obstruct the assertion of legitimate claims of the partnership beforehand.

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