aclanz RECHTSANWÄLTE

June 30, 2013

RECHT AKTUELL

CURRENT LAW

Edition VI/2013

Focus in this edition: Employment and Corporate Law

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1. Disclosure of Employer's Employment Criteria?

A rejected job applicant filing a claim under the AGG Allgemeines Gleichbehandlungsgesetz / General Equal Treatment Act) has no right to disclosure regarding the criteria on which the employer has based its final decision who to hire (*Bundesarbeitsgericht* / Federal Labor Court, May 25, 2013 – 8 AZ 287/08). The case at hand concerned a female job applicant coming from Russia and born in 1961, who was given no specific reason when the employer decided not to hire her. She alleged that her sex, age and nationality were the actual reasons of the refusal. However, she could not even provide any circumstantial evidence for her allegations. Thus, she sued for disclosure of the employment criteria but lost her case. According to the Court, there is no such claim for disclosure under German Law. In 2012 already the European Court of Justice had ruled that also European Law does not provide for any claim for disclosure in such matters (European Court of Justice, April 19, 2012 – C 415/10).

2. Leaving the Company: Staff Pictures Stay on Company Website

If an employee agrees to the use of a picture showing the staff (about 33 employees) he may not demand the removal of it after the termination of the employment relationship if the picture has been taken for illustration purposes only and the employee is not very prominent on it (*Landesarbeitsgericht Rheinland-Pfalz* / State Labor Court Rhineland-Palantine, November 30, 2012 – 6 Sa 271/12). A violation of the employee's general right of personality could be excluded due to the fact that the emloyer had informed the staff properly about the purpose of the picture and the employee had agreed to it (see also CURRENT LAW III-2012, No. 3).

3. Employer Entitled to Delete Privately Used Email-Account after Termination of Employment?

If the employee is entitled to use the business email-account also for private purposes, the employer cannot simply delete the account after the termination of the employment (*Oberlandesgericht Dresden* / Court of Appeals Dresden, September 5, 2012 - 4 W 961/12). The account may only be deleted if it is certain that the private data has no use for the employee anymore. Otherwise the employer may be held liable for compensation.

4. Termination for Cause: Only Positive Knowledge Triggers Two Week Deadline

The two week deadline which must be respected in order to terminate a Managing Director's Agreement according to section 626 (2) BGB (*Bürgerliches Gesetzbuch* / German Civil Code) is not triggered before the date on which the competent body

of a company obtains knowledge of facts conclusive for the notice of termination (*Bundesgerichtshof* / German Federal Court in Civil Matters, April 9, 2013 - II ZR 273/11). In the case at hand the Managing Director of a GmbH (*Gesellschaft mit beschränkter Haftung* / German Limited Liability Company) had concluded a bogus advisory agreement with a so-called consultant. The advisory agreement was terminated mutually in 2004. In 2009 the sole shareholder found out that the so-called consultant had never provided any services and gave notice of termination for cause. According to the court the shareholder had not missed the two week deadline because ignorance - even if it were due to gross negligence - would not be sufficient in order to start the two week deadline excluding a termination for cause.

5. What happens if the Creditor Threatens to File Insolvency Proceedings against the Debtor?

A payment made by an illiquid debtor may be qualified as a so-called incongruent transaction and may therefore be ultimately subject to reimbursement to the executer in insolvency proceedings if the creditor had threatened the debtor with filing insolvency proceedings (*Bundesgerichtshof* / German Federal Court in Civil Matters , March 7, 2013 - IX ZR 216/12). In the case at hand, the creditor's attorney had induced the debtor to pay by the following statement: *"In case that we find further evidence for our assumption that you are insolvent and you do not pay within the deadline set, we reserve the right to file for insolvency proceedings against you."* This was too much also from the Court's point of view: According to the reasoning of the Court the creditor desired improper behavior from the debtor by requesting a prioritised payment to the disadvantage of other creditors of the insolvent debtor. Such a behavior would violate the equal treatment principle of creditors in case of insolvency.

6. Cross-Pledge": New Liability Risks for Managing Directors of a GmbH?

Debiting automatically a company account cross-pledged with a private bank account of a Managing Director of a GmbH (*Gesellschaft mit beschränkter Haftung* / German Limited Liability Company) in order to balance the private account may cause a personal liability of the Managing Director also according to Section 64 GmbHG (*GmbH-Gesetz* / German Limited Liability Act). The Managing Director should have balanced his account with his own means in first place and it is a personal liability to do this in due course before the GmbH becomes insolvent (*Oberlandesgericht München* / Court of Appeals Munich, February 13, 2013 – 7 U 2831/12). The Court's ruling leaves open the more critical issue of cross-pledge agreements in groups of companys. It may have severe affects on the position of Managing Directors if Section 64 GmbHG is applied analogously also in such cases.

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