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1. How long does it take until the right to take vacation is time barred?

Vacation days not taken due to a sick leave are lost after a period of 15 months starting at the end of the year in which the vacation should have been taken (*Landesarbeitsgericht Baden-Württemberg /* State Labor Court of Baden-Wurttemberg, December 21, 2011 – 10 Sa 19/11). The case at hand dealt with compensation payments for vacation days not taken in the years 2007 – 2009. The employee who brought the action before the Court was on sick leave from 2006 until the termination of the employment relationship on November 30, 2010. According to section 7 para 3 *BUrlG* (*Bundesurlaubsgesetz* / German Federal Act on Vacation) the right to take vacation would have been time barred at the end of the first quarter of each following year (respectively March 31, 2008, 2009 and 2010). However, the Court stated that this 3 month period was not applicable due to Case Law of the European Court of Justice (ECJ) which initially had questioned such short periods for a time bar on vacation as a whole. However, lately the ECJ (November 22, 2011 – C-214/10-) has ruled that national rules providing for a 15 month period would be acceptable after all under EU law. Therefore, the State Labor Court has decided to simply extend the time bar provided in section 7 para 3 BUrlG to a 15 month period. Whether the *Bundesarbeitsgericht* / German Federal Labor Court) will confirm this ruling remains to be seen.

2. Recognition of Foreign Professional Qualifications: New Legislation

On November 4, 2011, the *Bundesrat* / German Federal Council gave its consent to the "*Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbender Berufsqualifikationen"* – Act on the Recognition of Foreign Professional Qualifications (www.bmbf.de/pubRD/bqfg.pdf). The law provides for uniform proceedings on the federal level which are supposed to work easier and faster than before. The respective authorities will check if the foreign professional qualification in question is equal to a German profession and if there are any significant differences. Nationality and background will be irrelevant. Authorities will have to make their decisions within three month period. The law will become effective on April 1, 2012.

3. Employees of Temporary Work Agency: No Additional Social Security Contributions as a Result of CGZP's Incapacity per Collective Bargaining

The Christliche Gewerkschaft Zeitarbeit & PSA (*CGZP* / Christian Union Temporary Work & PSA) has no capacity to act as a party in collective bargaining (*Bundesarbeitsgericht* / German Federal Labor Court, December 14, 2011 – 1 ABR 19/10). However, this does not automatically render collective bargaining agreements made before 2010 invalid. Temporary work agency employers, who had concluded such agreements prior to 2010 and thus had paid lower salaries than the company hiring-out the workers, would not have to pay additional social security contributions (*Sozialgericht Hamburg* / Social Court of Hamburg, November 18, 2011 – S 51 R 1149/11 ER). Reasoning: Since the *Bundesarbeitsgericht* / German Federal Labor Court has stated only the CGZP's incapacity in 2010 there is no automatic assumption that this would also be the case in earlier years. Parties would have to await further rulings of the *Bundesarbeitsgericht* / German Federal Labor Court as to the capacity of the CGZP

4. "*Geschäftsführer gesucht*" / "Managing Director Wanted" – No Gender-Neutral Job Ad

If a job advertisement is not kept gender-neutral it is discriminatory and therefore may justify a claim for compensation according to the AGG (*Allgemeines Gleichbehandlungsgesetz* / German General Equal Treatment Act) - *Oberlandesgericht Karlsruhe* / Court of Appeals Karlsruhe, September 13, 2011 – 17 U 99/10 -. A company had been looking for a managing director but simply used the male job title "*Geschäftsführer*" in its advertisements. According to the Court the AGG Act shall apply in such cases: the job advertisement has to be kept gender-neutral. An amendment like "m/w" (*männlich/weiblich* – male/female) or the simultaneous use of the female form of the job title "*Geschäftsführer/-in*" is required in order to avoid discrimination. The company was not able to prove that there was no discrimination in this specific case.

5. Shareholders' rights: Not Mandatory General Meeting for Selling Parts of Business

The Management Board of an AG (*Aktiengesellschaft* / German Public Limited Company) is not obliged to call in the General Meeting every time parts of the business of the company are to be sold (*Bundesverfassungsgericht* / German Federal Constitutional Court, September 7, 2011 - BvR 1460/10). Such a requirement cannot be recognized as a general principle (regardless of the economic relevance of the specific transaction) required by constitutional law. According to the German Federal Constitutional Court the minority shareholders' protection in general is sufficiently ensured by the compensation system according to sections 311 ff. AktG (*Aktiengesetz* / German Stock Corporation Act). The Court's decision allows lower jurisdictions a more restrictive handling of cases where the law or the articles of association do not provide specific stipulations concerning the General Meeting's competences (so called "*ungeschriebene Kompetenzen*" – unwritten competences). Thus, the Court's judgment is yet another contribution and amendment to the famous *Holzmüller*-decision, made by the *Bundesgerichtshof* / German Federal Court in Civil Matters in 1982, which initially caused some confusion in practice.

6. Entrepreneurial Scope of Discretion of the Management Board

Acting against the (main) shareholder's interests lies within the legitimate entrepreneurial scope of discretion of the Management Board (*Oberlandesgericht Frankfurt am Main* / Court of Appeals Frankfurt/Main, August 17, 2011 – 13 U 100/10). The case at hand dealt with compensation claims of an *Aktiengesellschaft* / German Public Limited Company, brought forward against the former Management Board on the grounds of a contract not complying with the (main) shareholder's interests. According to the Court the Management Board did not violate its duty of care arising from section 93 *AktG* (*Aktiengesetz* / German Stock Corporation Act) as it is basically not submitted to directives and due to its wide scope of entrepreneurial discretion (Business Judgment Rule) including the risk of miscalculations and misjudgments. Today, a priority of shareholders' interests following the Anglo-Saxon Shareholder Primacy Principle may only be acknowledged when it comes to the duty of the Management Board to take the Shareholder Value Principle into account when making his decisions.

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