

## LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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# Has the Court of Justice of the European Union (CJEU) brought an end to collective agreements for temporary workers?

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### Are exceptions to the equal pay principle still permissible?

In its judgement dated 15 December 2022 (case no.: C-311/21) the CJEU ruled on the question whether and, if so, under what conditions, is deviating from the principles of equal treatment of temporary workers in a collective agreement compatible with the European law.

#### I. Facts of the matter and decision

The facts of the case were as follows: the claimant was employed by the respondent, a temporary employment agency, as a temporary worker and was hired out to a retail company as an order picker. Initially, the claimant received a gross hourly wage of 9.23 euros. According to the claimant's submissions, comparable regular employees at the hiring company received a gross hourly wage of 13.64 euros for the same work.

Deviating from the principle of equal treatment, the relevant collective agreement applicable to the parties that was concluded between the German trade union ver.di and Interessenver

band Deutscher Zeitarbeitsunternehmen [German Association of Temporary Employment Agencies (iGZ e.V.)] provides for a lower remuneration of temporary workers

than that of comparable regular workers at the hiring company. The claimant demanded payment of difference in remuneration between themselves and the regular workers. After the claim was rejected at first instance and on appeal the German Federal Labour Court (Bundesarbeitsgericht, BAG) (case no.: 5 AZR 143/19 (A)) referred the case to the CJEU, in particular with the question as to under what conditions it is permissible to derogate from the principle of equal treatment, including that of equal pay. The CJEU has now ruled on the matter. It held that in principle, it is permissible to enter into collective bargaining agreements that provide for unequal treatment, disadvantaging temporary workers in terms of their basic working and employment conditions (for instance, remuneration terms). However, such collective agreements must compensate for this unequal treatment through other advantages relating to basic working and employment conditions in or-

der to comply with the overall protection of temporary workers guaranteed by the European law. Whether such compensation is adequate has to be evaluated in specific individual cases. To do this, the basic working and employment conditions applicable to the hiring company's regular employees should be compared with those of the temporary worker.

## II. Implications of the decision

The courts in Germany will have to take into consideration the principles laid down by the CJEU in their decisions. Even though the CJEU has not quite brought an end to collective agreements for temporary workers, its decision may have significant implications in practice.

Current collective agreements for the temporary employment sector frequently derogate from the principle of equal treatment, particularly with regard to remuneration. If no adequate compensatory regulations in favour of temporary workers are included in these agreements, the hiring companies may also be subjected to claims for additional payment among other things. It is assumed that the parties to collective agreements will endeavour to adjust their agreements in accordance with CJEU's specifications. In doing so, it may be difficult to evaluate exactly when the disadvantages resulting from the derogation from the equal treatment principle are adequately compensated. It will be interesting to see how the situation further unfolds.

### Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Hagen Strippelmann on +49 221 33660 504 or by email to [hstrippelmann@goerg.de](mailto:hstrippelmann@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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