

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Munich LAG: Works Councils have the right to take the initiative when determining how to record working time

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Works Councils have the right to take the initiative when determining how to record working time, according to a decision of the Munich Regional Labour Court (Landesarbeitsgericht, LAG) in a [press release dated 20 June 2023](#). This means that Works Councils can force employers to implement regulations as to **how** working time is recorded.

Context of the decision

In a sensational judgment of the Federal Labour Court (Bundesarbeitsgericht, BAG) dated 13 September 2022 (1 ABR 22/21), the First Senate held that employers are already subject to a statutory obligation to record working time (for more information see our [legal update dated 5 December 2022](#)). In light of this, the BAG rejected the claim that Works Councils have the right to take the initiative when it comes to **introducing** a timekeeping system (question of **whether**). The BAG already pointed out in its reasoning, however, that Works Councils do have the right to take the initiative regarding the **design** of the timekeeping system, i.e. in relation to **how** working time is recorded.

Facts of the matter

The background of the decision of the Munich LAG was the demand of a Works Council to enter into negotiations regarding the design of the time keeping system for external staff. Until this point there had only been Works Agreements regarding the working hours and their recording for the internal staff at the employer's company. The employer rejected the Works Council's demand. The employer's grounds for this were that they had in general decided on an electronic timekeeping system but did not want to adopt regulations for external staff for the moment due to the pending statutory regulations and the planned flexibilisation of collective bargaining law. The employer hoped that the expected statutory regulations would not impose an obligation to record working time for external staff.

At the request of the Works Council, the Munich Labour Court (Arbeitsgericht, AG) appointed a mediator because, in the opinion of the AG, the Works Council did have the right to take the initiative regarding **how** working time is recorded.

Decision of the Munich LAG dated 22 May 2023

With its decision dated 22 May 2023 (4 TaBV 24/23) (currently only available as a press release), the Munich LAG upheld the decision of the AG and held that the Works Council did have the right to take the initiative in relation to designing the timekeeping system. The fact that the employer wanted to wait for statutory regulation does not preclude the Works Council's right to take the initiative. Likewise, the employer could also not come to a decision about the form of timekeeping, which required co-determination with its Group Works Council. The LAG held that currently the decision on the best form of timekeeping is usually the subject of co-determination with the local Works Council.

Comments

The Munich LAG's decision clearly shows that the upcoming statutory regulation on recording working time (for more information on this draft

bill please see our [Legal Update dated 21 April 2023](#)) does not protect the employer from the fact that the Works Council may demand regulation on the design of recording working time. As soon as the obligation to record working time is regulated by law, this could mean that Works Agreements already concluded with the Works Councils will lapse and must be renegotiated. When drafting Works Agreements it should be ensured, with regard to the expected statutory regulation, that it is possible to terminate the Works Agreement on short notice and in addition the continued effect is excluded, to the extent permitted by law.

It should be taken into account that the decision of the Munich LAG is not yet final. Whether an appeal to the BAG will be permitted can be inferred from the reasoning that has not yet been published. It is, however, unlikely that the LAG will grant an appeal to the BAG, considering the judgment of the BAG on recording working time and its clear positioning on the issue.

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 Lena Klever on +49 221 33660 544 or by E-Mail to LKlever@goerg.de. For further information about the author visit our website www.goerg.com.

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