

German Federal Labor Court Rules Limitation Periods in Employment Contracts That Do Not Explicitly Exclude the Minimum Wage Are Ineffective

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The questions of whether limitation periods in employment contracts must expressly exclude claims to the statutory minimum wage and whether limitation/forfeiture clauses in employment contracts without such an exception are ineffective in their entirety or only partially with regard to minimum wage claims are especially important in practice. Despite their importance, these questions have been highly debated until now. The Nuremberg State Labor Court (May 9, 2017 - 7 Sa 560/16) and the Baden-Württemberg State Labor Court (April 6, 2018 - 11 Sa 40/17), for example, decided that limitation periods in employment contracts that do not explicitly exclude statutory minimum wage claims from expiring do not impact the effectiveness of the limitation clause in its entirety. The Hamburg State Labor Court (February 20, 2018 - 4 Sa 69/17), on the other hand, recently decided that limitation period clauses in employment contracts are invalid in their entirety if they do not exclude claims to the minimum wage and if those contracts were concluded or amended after the German Minimum Wage Act went into effect.

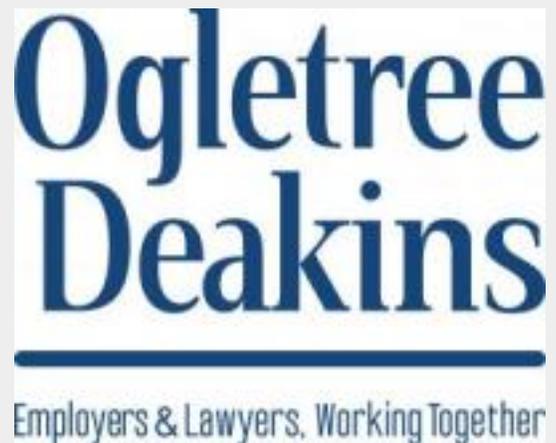
On September 18, 2018, the Federal Labor Court finally settled the dispute with a ruling on limitations periods, according to which:

A preformulated limitation clause, which implicitly includes all claims from the employment relationship without any restriction, and thus also the minimum wage guaranteed by Sec. 1 of the German Minimum Wage Act of January 01, 2015, violates the transparency requirement of Sec. 307 Para. 1 sent. 2 of the German Civil Code, and is therefore ineffective in its entirety at least when the employment agreement was concluded after December 31, 2014.

The Federal Labor Court justified its decision by stating that the limitation clause violated Sec. 307 (1) sent. 2 of the German Civil Code. According to the statement, the clause was not clear and understandable because, contrary to Sec. 3 sent. 1 of the Minimum Wage Act, it did not explicitly exclude claims to the payment of the statutory minimum wage starting January 1, 2015. Therefore, the clause was not effective for the claim to paid leave compensation (which the worker had asserted in the case under Sec. 306 of the German Civil Code). According to the Federal Labor Court, neither the wording nor the sense and purpose of Sec. 3 sent. 1 of the German Minimum Wage Act restricts the application of Sec. 306 or Sec. 307 para. 1 sent. 2 of the German Civil Code.

Key Takeaways

In the most recent state labor court cases, the employers involved credibly argued that limitation period clauses



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in employment contracts are not completely ineffective. Nevertheless, the Federal Labor Court has now ruled that, in practice, limitation periods in employment contracts that do not explicitly exclude statutory minimum wage entitlements are ineffective in their entirety as a result. This ruling applies to employment contracts concluded after December 31, 2014.

Judging by the decision, the Federal Labor Court differentiates between employment contracts concluded before January 1, 2015 (old employment contracts), and those concluded after January 1, 2015 (new employment contracts). Hence, the (Federal Labor Court) judges did not use the month in which the Minimum Wage Act went into effect—August 2014—as a critical date but rather the month in which the relevant minimum wage claim first arose under the German Minimum Wage Act—January 2015.

Employers should also note that the court decision does not definitively state whether the limitation periods with regard to the minimum wage entitlements in old employment contracts are only partially invalid—which is the currently prevailing opinion—or invalid in their entirety. Employers may want to assume that the Federal Labor Court has not made a final decision regarding this question. The specific dispute in which the court made the ruling concerned a new employment contract. Particularly with regard to this question and the transparency requirements imposed by the Federal Labor Court, it is necessary to wait until the full text of the ruling is available.

Against this background and unsettled questions, employers may want to include a new effective exclusion clause in future amendment agreements, as well as a concrete definition of the subject matter of the amendment. Otherwise, there is a risk that courts will consider amendment agreements in which the continued effectiveness of all unaltered provisions of an old employment contract is regulated to be new employment contracts, with the consequence that the limitation clause becomes ineffective in its entirety.

After this recent development, companies may want to reexamine their employment contract limitation periods and, in the future, include differentiated limitation clauses that explicitly exclude statutory minimum wage claims in new employment contracts as well as in amendments and supplements to both old and new employment contracts. To ensure transparency and as a precautionary measure, employers may also want to explicitly exclude from such clauses other legal claims that cannot be forfeited, such as claims for injury to life, body, or health.

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