

Part of Deutscher AnwaltSpiegel Publishing Group

LaborLawMagazine

The online magazine for labor law in companies

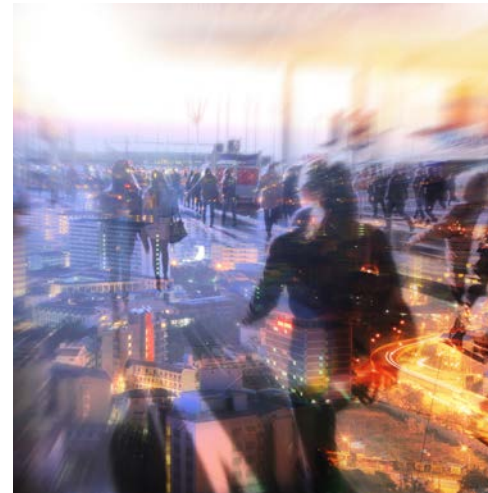
→ In this issue:



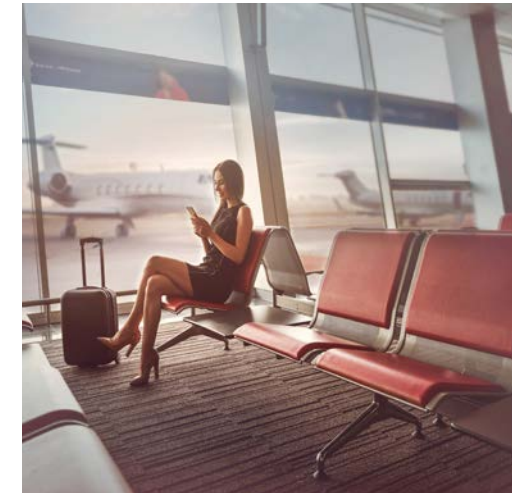
→ 3
Numerous new laws to be expected as a result of the coalition agreement



→ 6
Well-intentioned gesture or risk for the economy?



→ 10
AI and workers' rights - a high risk area, really?



→ 14
Unique challenges



Prof. Dr.
Thomas Wegerich
Editor
LaborLawMagazine

Dear Readers,

The new German Federal Government has entitled its coalition agreement as follows: Dare more progress – Alliance for freedom, justice and sustainability. This seems to be aiming quite high. Markus Künzel knows what this all means with regard to upcoming changes in labor law.

One of the most important topics on the political agenda are the increases in minimum wages. Künzel considers this as potentially unconstitutional. Hagen Köckeritz and Sören E. Hennies take an even closer look. You should be familiar with all the different arguments that are on the table.

We have three more articles to offer in this issue of the Labor Law Magazine: Frank Kohls addresses Artificial Intelligence and labor law, Ana Sofia Walsh, Jack Stokes and Andreia Ghimis write on the comeback of business travel during and after the pandemic, and Antje Teegler und Giuseppe Marletta describe the evolving role of the Chief Legal Officer. Enjoy reading

Sincerely yours,

Thomas Wegerich

LABOR LAW

- 3 **Numerous new laws to be expected as a result of the coalition agreement**
The federal government wants to increase the minimum wage. This has been sharply criticized by unions and is considered unconstitutional.
By Markus Künzel

LABOR LAW/MINIMUM WAGE

- 6 **Well-intentioned gesture or risk for the economy?**
Increases in minimum wage and marginal earnings threshold - well-intentioned gesture or risk for the economy?
By Dr. Hagen Köckeritz, LL.M. oec. int. and Dr. Sören E. Hennies

LABOR LAW

- 10 **AI and workers' rights - a high risk area, really?**
If one talks about Artificial Intelligence, the immediate thought of a use case would most likely not be in labour and employment law, but other areas of law.
By Dr. Frank Kohls

CONTACT INFORMATION

- 22 **Advisory Board**
24 **Partners**
25 **Imprint**

LABOR LAW INTERNATIONAL

- 14 **Unique challenges**
Business travel compliance in Europe has continued to evolve in recent years and travel begins to steadily pick up
By Ana Sofia Walsh, Jack Stokes and Andreia Ghimis

ACC COLUMN

- 19 **Wearing many hats**
The evolving role of the CLO and their impact on business
By Giuseppe Marletta and Antje Teegler

Visit our website:
www.laborlaw-magazine.com

Numerous new laws to be expected as a result of the coalition agreement

The federal government wants to increase the minimum wage. This has been sharply criticized by unions and is considered unconstitutional.

By Markus Künzel



Markus Künzel

ADVANT Beiten, Munich
Rechtsanwalt, Fachanwalt für Arbeitsrecht – Attorney,
specialized in labor law, Partner

markus.kuenzel@advant-beiten.com
www.advant-beiten.com



Minimum wage: It remains to be seen what the new regulations will actually look like in the end after the 3 coalition parties have discussed them and what impact they will have on the status quo.

Dare more progress - Alliance for freedom, justice and sustainability" is how the traffic light coalition has titled its 178-page coalition agreement for the years 2021 to 2025. The plans under the heading "Respect, opportunities and social security in the modern world of work" are of particular importance for all those working in the field of labor law and human resources. The following is an overview of some of the important topics.

Minimum wage

The statutory minimum wage is currently being developed by a Minimum Wage Commission (Mindestlohnkommission) consisting of representatives of employers and employees based on the Minimum Wage Act. For 2022, an increase to EUR 9.82 on 01/01. and EUR 10.54 on 07/01. has already been set. The new federal government also wants to increase the minimum wage to EUR 12.00 in

October 2022. This has already been sharply criticized by employers' associations and is considered unconstitutional.

Working from home / mobile work

There is currently no legally guaranteed right or obligation to work from home. However, there is currently a home office mandate in force until 03/19. based on the Infection Protection Act (Infektionsschutzgesetz) in connection with the coronavirus pandemic.

It is planned that every employee will be entitled to discuss the possibilities of mobile working and working from home activities with his or her employer. The employer should only be able to object to this if he can demonstrate that opposing operational concerns exist. Overall, the possibilities of mobile working / working from home are to be improved. This form of working has increased extraordinarily in times of the pandemic and reflects the wishes of employers and employees for different reasons. A new regulation that has already been in place for a few months grants work councils a say on what mobile work should look like.

Working time law

In times of new working worlds and models, the call for easing the working time law is becoming louder and louder. From the employers' point of view, there is criticism of the rigid rest periods that must be observed between work

phases (basically 11 hours) and the maximum weekly working time (within a 5-day-working, week regular 40 hours, extension to 50 hours possible). Unfortunately, nothing in this context shall be changed fundamentally. Nevertheless, flexible working time models should be possible in the future, albeit only within the framework of collective bargaining agreements. However, more and more companies in Germany do not apply collective agreements, including start-ups, for which this flexible option would then be ruled out. Furthermore, the fundamental ruling of the European Court of Justice of 2019 (2019/05/14 - C - 55/18) on the obligation to record working time is to be transposed into national law. The European Court of Justice has, among other things, required an objective, reliable and accessible system to be established by each employer to measure the time worked by each employee. This means that trust-based working time models in which employees have not previously recorded any working hours can no longer be continued in this way and must therefore be adapted.

Fixed-term employment contracts

In Germany, fixed-term employment contracts (befristete Arbeitsverträge) are a popular and usually easy-to-use flexible instrument. Fixed-term employment contracts are advantageous for employers in that such contracts do not have to be terminated, which could regularly be reviewed in court, but end automatically upon expiry. In Germany, due to the strict regulations of the Dismissal Protection Act (Kündigungsschutzgesetz), terminations are often associated with legal uncertainty for employers. This Act

applies to terminations in companies with more than 10 employees and if the employee has been with the company for more than half a year.

The possibility of concluding fixed-term employment contracts is to be limited in terms of duration. It is currently unclear whether the further restrictions, already laid down in a drafted act by the previous government but ultimately not implemented, will be introduced. According to the drafted act, fixed-term contracts without objective reasons have to be limited to 18 months (currently 24 months) and must allow only one possibility of extension (currently 3 extensions possible). It was also envisaged that only a certain number of workers in a company could be employed on fixed-term contracts without a given reason for the fixed term.

International posting of workers / specialized workers

The federal government wants to abolish unnecessary administrative requirements for A1 certificates for cross-border services by introducing a European electronic real-time register. Also, certain business trips are to be exempted from the requirement of an A1 certificate. Currently, workers are required to carry the A1 certificate with them on short-term business trips as well as on longer-term postings within the EU and also on short-term mobile work abroad.

The protection of workers in cross-border postings is to be improved and bureaucratic hurdles to be reduced. In the

future, there have to be effective and efficient controls in order to be able to take action against misuse and fraud. Also, comprehensive advisory services for posted and mobile workers are required. An information platform is also to be introduced in all EU languages, including information on national labor law in the member states.

There should be further development of existing immigration laws to recruit specialized workers from abroad in a targeted manner. To this end, the EU Blue Card residence permit is to be extended to non-academic professions if there is a concrete job offer.

Apprenticeships and postgraduate professional education

The coalition agreement deals extensively with the challenges of digitalization and the accompanying need to qualify employees for new professions. Accordingly, it announces improved opportunities for professional reorientation, apprenticeships and postgraduate professional education. Among other things, it has to be possible for employees under certain conditions to obtain a vocational qualification retroactively or to start a professional reorientation. For this purpose, an agreement is to be concluded between employers and employees. In this case, the Federal Employment Agency (Bundesagentur für Arbeit) can grant subsidies on application and support these projects.

Equal pay

The laws already in place in this context are to be supplemented and the wage gaps that still exist between women and men are to be closed. In particular, the enforcement of equal pay is to be strengthened by enabling workers to assert their individual rights, including through unions.

Other planned regulations

Yet another announcement: New and additional regulations on occupational health and safety, extension of co-determination rights of works councils and extensions on rights of unions, families support, support for disabled people as well as whistleblowing, company pension plans and employee data protection.

Summary

While a draft of the Minimum Wage Act is already available, for many of the issues presented it remains to be seen what the new regulations will actually look like in the end after the 3 coalition parties have discussed them and what impact they will have on the status quo.

In any case, this will raise numerous legal questions that lead to discussions and negotiations between employers, employees, works councils, unions and employers' associations.. ←

ADVERTISEMENT

From lawyers for companies



The BusinessLawMagazine reports quarterly on all important questions related to German corporate, commercial, tax, labor, compliance and IP/IT law. Featuring articles written with real-world legal practice in mind, the online English language magazine primarily targets company lawyers, managing directors, judges, prosecutors and attorneys in Germany's leading trade partners.

www.businesslaw-magazine.com

Published by



Partners



F.A.Z. BUSINESS MEDIA GmbH – Ein Unternehmen der F.A.Z.-Gruppe
Frankenallee 71-81 • 60327 Frankfurt/Main, Germany