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German Tax and Legal News

Minimum Wage For On-Call Services and On-Site Stand-By Times

On November 19, 2014, the Federal Labour Court decided (5 AZR 1101/12) that the minimum wage in the care sector is to be paid not only for full-time employment, but also for On-Call Services and On-Site Stand-By Times.

I. Facts of the Case

The plaintiff who was born in 1954 was employed as a care assistant by the defendant, a private company providing care services, for a gross monthly salary of EURO 1,685.85. Her responsibilities included, among other things, looking after and caring for two nuns of a Catholic sisterhood who were both wheelchair bound and suffering from dementia. The plaintiff also had housekeeping duties as well as actual care duties for the nuns. She worked in round-the-clock shifts each lasting for two weeks, during which she was obliged to be present at the place of care. To this end she had a room on the premises of the sisterhood. The nuns ate their lunch with the sisterhood from 11:45 to 12:45 hours and attended the church service from 17:50 to 18:50 hours every day.

With her legal action the plaintiff wanted to obtain an additional gross payment totaling EURO 2,198.59 for the months from August to October 2010 claiming that the then minimum wage in the care industry of EURO 8.50 per hour was to be paid for any type of work pursuant to § 2 Subsection 1 Regulation on Working Conditions in the Care Industry (Pflegearbeitsbedingungenverordnung – PflegeArbbV). She was of the opinion that she had worked for 24 hours continuously without a break and a deduction for breaks should not be made. The defendant objected that the minimum wage did not have to be paid for on-call times on the premises pursuant to PflegeArbbV. The employment agreement could include compensation for on-call times on the premises at a lower rate.

II. Decision

The labor court in Stuttgart principally dismissed the legal action. Following the plaintiff's appeal the Higher Labor Court (Landesarbeitsgericht) in Baden-Wuerttemberg allowed the legal action on the basis that the minimum wage should be paid for 22 hours per working day in the round-the-clock shift. The Landesarbeitsgericht evaluated the times for lunch and attending the church service as unpaid breaks. The defendant's appeal on a point of law was unsuccessful before the Federal Labor Court (Bundesarbeitsgericht – BAG). The judges in Erfurt ascertained that the minimum wage was specified "per hour" pursuant to § 2 PflegeArbbV and was therefore linked to working time which required compensation. This did not only include actual duties but also on-call services and on-site stand-by times when the employee had to remain on stand-by duty at a place determined by the employer so that he/she could work without delay, if necessary. Although a lower salary was specified here than for actual duties, this possibility was not utilized in the care industry. Agreements which foresee a salary for on-call services on the premises in the care industry which is lower than the minimum wage pursuant to § 2 PflegeArbbV are therefore invalid according to the BAG.

III. Conclusion

The ruling could have wide-ranging effects on the statutory minimum wage which came into force on January 1, 2015, pursuant to § 1 Subsection 2 Minimum Wage Act (Mindestlohngesetz – MiLoG). This too is specified per hour and does not make a distinction between actual duties, on-call services and stand-by times on the premises. MiLoG does not apply to on-call times off the premises. It remains to be seen whether the principles of the above decision will also be transferred to § 1 Subsection 2 MiLoG. Affected employees should at any rate keep this issue in mind since considerable additional payments could be the result.

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