

## **Duty to provide private telephone number to employer considered as potential violation of personality rights**

The judgement of the Thuringia Labor Court of 16 May 2018 clarified the question of the accessibility of the employee: An employee filed a lawsuit against the warning of his employer, who wanted him to have the private mobile phone number to set up an on-call duty against the employee's will. Rightly so, as the LAG Thuringia emphasized. The request to communicate the private mobile telephone number was a considerable encroachment on the employee's right of personality.

### **Facts**

An employee refused to provide his private mobile phone number when the employer asked him to do so. As the employee worked on-call duty, the employer issued a warning notice. As a result, the employee successfully filed a complaint.

### **Judgement**

The court justified its decision with data protection arguments and emphasized that collection of personal data of employees is only legitimate if it is necessary for the establishment, execution, termination or settlement of the employment relationship or for the execution of organizational, personnel and social measures, in particular, for personnel planning. Following a proportionality test, however, the Thuringia Labor Court came to the conclusion that none of the points applied in the specific case and that the action was therefore justified.

### **Employer's risk**

The employer had abolished the previously existing 24 hours on-call duty in order to save costs. According to the Thuringia Labor Court, the employer himself created the risk that he might not be able to reach the employees. Accordingly, he bears the liability risk and the employee should not make amends for this action by an interference in his personal rights. Ultimately, "emergencies" in the area of the employer's activities (municipal employer - health authority) are regularly foreseeable events, the occurrence of which is not unlikely. The employer must always be prepared for such eventualities.

### **Decision**

The Thuringia Labor Court stated in its guiding principle that: "The collection/recording of an employee's private mobile phone number against his will is only permissible in exceptional cases because of the interference with the general right of personality if the employer, without knowledge of the mobile phone number, cannot, cannot completely or cannot lawfully perform a legitimate task for which the employee is employed in the individual case and if another organization for the performance of the task is not possible or reasonable for the employer."

The employer had previously organized and implemented an adequate process (24 hours on-call duty service), but abolished it for cost reasons. Consequently, he could have achieved that he was able to reach the employee in emergencies. The decision for whom the employee wishes to be reachable in his free time is at the discretion of the individual employee.

### **Summary**

The employer has no right to ask for the employee's private mobile phone number in order to be able to reach him after the regular working time has ended. An exception is given, if the data is necessary for the performance of tasks for which the employee is employed and an organization other than by the request to be informed about the mobile phone number can reasonably not be expected of the employer. The restriction is based on the employee's right of personality and the fact that the leisure time is free from an organizational unit determined by a third party under labor law. The employer must primarily regulate the organizational process in such a way that it does not lead to a disproportionate use of the employees' free time.

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