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German Tax and Legal News

ECJ: No automatic forfeiture of vacation in case of a missing request for leave

Necessary amendment to internal processes due to current ECJ-rulings regarding forfeiture of vacation claims.

Rulings of the European Court of Justice (ECJ) as of November 6, 2018 ([C-619/16](#) and [C-684/16](#)) now strictly limit the permissibility of forfeiture of employees' vacation claims.

According to sec. 7 para. 3 Federal Vacation Act (Bundesurlaubsgesetz, BUrlG), vacation needs to be (taken and) granted within each calendar year and may only in exceptional cases be transferred to the following calendar year, as otherwise, it forfeits.

The ECJ now ruled that the vacation claim of an employee does not automatically forfeit in cases where an employee did not request vacation. Pursuant to the ECJ, as the employee is the weaker party to the contractual relationship, it cannot be excluded that the employee refrains from requesting vacation in order to avoid disadvantages. Therefore, in the ECJ's view, the employer is required to give evidence that the employee – being aware of the relevant circumstances – knowingly waived the vacation entitlement and that the employee would have been able to actually take vacation. Only if these requirements are fulfilled, a forfeiture would not constitute a violation of European Union law.

As a consequence, employers should inform employees about a potential forfeiture in a timely manner prior to the end of the calendar year or the individually agreed transfer term's end. The information should be given with adequate prior notice. It will certainly not suffice to inform the employees about a potential forfeiture only when the outstanding vacation days nearly correspond with the employees remaining working days.

Also against the background of a potential need for increasing provisions for untaken vacation days in financial statements (as of December 31) timely making the request to take vacation is highly recommendable. Thus, affected employers should take immediate action. Further, a differentiation between mandatory and contractual vacation claim can be of high importance.

It remains to be seen what influence the current court rulings will have on court rulings dealing with vacation entitlements of employees absent due to long-term illness.

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