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German Tax and Legal News

Participation rights of the works council in case of creating and running a Facebook page by the employer

By judgement of December 13, 2016 (1 ABR 7/15) the Federal Court of Employment Law has decided on the participation rights of a works council in case of creating and running of a Facebook page.

A function of a Facebook page run by the employer which enables users to post comments regarding the behavior and the performance of the employees is subject to participation rights of the works council pursuant to sec. 87 para. 1 no. 6 Works Constitution Act (Betriebsverfassungsgesetz – BetrVG).

Facts

The employer, controlling company of a group with approximately 1300 employees, has used a Facebook page for marketing purposes for several years. On this website registered users may post comments. After several users had complained about employees of the company by using the comments function, the group works council argued that the registration and the use of the Facebook page were violating its participation right according to sec. 87 para. 1 no. 6 Works Constitution Act (Betriebsverfassungsgesetz – BetrVG).

Judgement of the Federal Court of Employment Law

The Federal Court of Employment Law has confirmed a participation right of the group works council in the particular case. A Facebook page that enables users to post comments is a technical implementation according to sec. 87 para. 1 no. 6 Works Constitution Act intended to control the behavior and the performance of the employees.

The comments function allows users to post comments with regard to the behavior and the performance of the group employees on the Facebook page of the employer. Based on the content or the particular situation, these comments can be assigned to a specific employee. It is irrelevant whether the website is aiming to control the performance and the behavior of the employees or whether the users are requested to post comments regarding the behavior and the performance of the employees. Monitoring according sec. 87 para. 1 no. 6 Works Constitution Act is not only the evaluation or the processing of existing information but already the collection of data. Furthermore, it is not required that the data is automatically collected by the technical implementation itself. It is sufficient that the information is entered by the users of the website and will be permanently stored by the software used by Facebook and can be accessed by the employer without any time limit.

Comments

More and more companies are using social networks like Facebook & Co. for marketing purposes. Insofar as the websites run by the employer (companies' homepage included) allow users to post comments, the participation rights of the works council apply regardless of whether the employer actually plans to evaluate the information for control purposes. Thus, the participation rights should be taken into account when considering the use of social networks.

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