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## **Shift to full-time work does not increase the acquired leave entitlement**

In case an employee shifts from part-time work to full-time work the leave entitlement already acquired during the part-time must not be calculated on the basis of a full-time work.

By judgement dated November 11, 2015 (file no. C-219/14 – Greenfield) the European Court of Justice ruled that an employee's shift from part-time work to full-time work does not increase the leave entitlement already acquired during the term of the part-time work in accordance with the now performed full-time work.

### **Circumstances of the Case**

In summer 2012, the employee has taken vacation leave in the amount of several weeks and thereby substantially exceeded her leave entitlements. Prior to the commencement of her vacation leave, the employee performed work in an amount of one working day per week (part-time work). As from August 2012, the employee worked full-time. In May 2013, the employee's employment relationship was terminated. Prior to the termination of the employment relationship, the employee claimed for granting further vacation leave. However, the employer rejected the employee's claim arguing that the employee has already taken her entire vacation leave, even exceeded her leave entitlements. After the termination of her employment relationship, the employee took legal action claiming for a financial compensation concerning the – in her opinion – existing but not granted vacation leave.

The competent Employment Tribunal Birmingham requested the European Court of Justice to respond to the question, how the number of vacation days already acquired had to be calculated in case the employee's weekly working time increased.

### **Ruling of the European Court of Justice**

The European Court of Justice ruled that directive 2003/88/EC (working time directive) does – in the event of an increase of the weekly working time – not entail any obligation to newly calculate the number of vacation days acquired during the term of the part-time work according to the full-time work which is then performed by the employee. Hence, only those leave entitlements of the employee that arise after the employee's shift from part-time work to full-time work must be calculated on the basis of the employee's full-time work.

The European Court of Justice refers to its settled case law according to which leave entitlements that have been acquired by the employee during a term of full-time work must not be reduced in accordance with the employee's shift to part-time work. Thus, leave entitlements must always be calculated on the basis of the employee's weekly working time that applies at the time the claim arises with the result that leave entitlements already acquired are not related to a later increase of the employee's weekly working time.

Furthermore, the European Court of Justice pointed out that it follows from the directive 2003/88/EC that vacation days which have already been taken during the term of the part-time work and which exceed the employee's leave entitlement owed during said term, can – during the vacation year – be deducted from respectively settled with the leave entitlement that (newly) arises during the employee's full-time work.

### **Practical Advice**

The judgement of the European Court of Justice deserves approval. This approach ensures that – irrespective of the time at which employees actually take their vacation leave – vacation days are only granted to the extent to which employees perform work in accordance with their respective agreed weekly working time. In case of any change of working days, irrespective of whether the employee's weekly working time increased or has been reduced, the employer should thoroughly check the employee's actual leave entitlements. However, it remains to be seen which conclusions the German Federal Labour Court (Bundesarbeitsgericht) will draw upon the judgement of the European Court of Justice

as regards its jurisdiction in terms of annual leave; although it is likely that it will – as in the reverse case (judgement dated February 10, 2015; file no. 9 AZR 53/14) – continue its jurisdiction accordingly.

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