

The joint operation: Alternative to a supply of temporary workers?

On April 1, 2017, the AÜG reform comes into force. From this date on, a permanent use of temporary workers will no longer be possible.

With the introduction of a maximum deployment period of 18 months, from April 1, 2017, a long-term supply of temporary workers will no longer be possible. The establishment of a joint operation may be considered a long-term alternative.

As of the date of entry into force of the reform of the Act on Temporary Work (Arbeitnehmerüberlassungsgesetz, AÜG), the same temporary worker may not be posted to the same hiring company for more than 18 consecutive months. Deviating agreements, in particular collective agreements or work agreements, will be possible, however, excluding a permanent supply of temporary workers.

As a result of the maximum deployment period of 18 months applicable from April 1, 2017, it will no longer be possible for companies to meet their demand for external personnel in the long term through the supply of temporary workers.

The joint operation may be an alternative to the supply of temporary workers. If the conditions of the joint operation are met, the restrictions of the AÜG do not apply.

Conditions of a joint operation

One speaks of a joint operation when two legally separate companies jointly deploy their employees with the aim of fulfilling a specific operational purpose. To this end, the employees, as well as the necessary material and intangible operating resources, are grouped together, organized and deployed in a joint operation. The deployment of the employees of both companies is controlled by a uniform management. The uniform management of the joint operation must cover the essential functions of an employer in social and personnel matters and requires a specific management agreement (at least an implied one).

Distinction between a joint operation and the supply of temporary workers

According to the case law of the German Federal Labour Court (Bundesarbeitsgericht, BAG), a joint operation exists when the companies concerned pursue their own operational purposes within the framework of an entrepreneurial cooperation by deploying their employees. It is not, however, the case when an employer only deploys its employees to a third party for the purpose of fulfilling the third party's operational purposes.

The advantages of a joint operation versus the supply of temporary workers

A significant advantage of the joint operation compared to the supply of temporary workers is the already mentioned possibility of a permanent deployment of external personnel. In addition, different working conditions can in principle be designed for both employee groups involved in the joint operation (application of different collective agreements, no equal treatment principle).

Disadvantages of a joint operation versus the supply of temporary workers

However, a joint operation leads to disadvantages in terms of dismissing employees. In the event of necessary dismissals for operational reasons, a social selection based on the joint operation and thus a cross-company social selection must be carried out. Furthermore, each company of the joint operation might be obliged to examine whether there are possibilities of continuing employment of the employee concerned also in the respective other company.

Conclusion

The joint operation is a practical alternative to the supply of temporary workers. However, the different options and their advantages and disadvantages should be carefully analyzed and evaluated in each individual case.

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