

## **Transition grant as benefit of company pension**

### **Scope of insolvency protection of the pension protection fund at so called transition grants**

Even a temporarily paid transition grant may constitute an insured benefit of company pension which is insolvency protected by the pension protection fund.

#### **Executive Summary**

The present decision of the Federal Labor Court essentially has two core statements of relevance to the practice: On one hand, so-called only temporarily paid – transition grants are subject to company pensions that are to be secured against insolvency by the pension protection fund. On the other hand, despite a different shop agreement, employees with non-forfeitable benefits who had left their former employer and worked for another employer before retiring, are entitled to the payment of transition grants.

#### **Facts**

The Federal Labor Court had to rule a case on March 3, 2018 (case 3 AZR 277/16) in which the former employer of the plaintiff had a shop agreement providing for transition grants for the first six months of the pension, if the employee retired immediately after his service. The transition grant was not to be credited towards the other company pension.

The former employer is now insolvent. The plaintiff, who was no longer employed by the former employer at the time of his retirement, has received company pensions from the pension protection fund as result of the insolvency of the former employer since January 2015. The pension protection fund refused the payment of the transition grant. It considered that the transition grant, in the absence of a providing purpose, was not a company pension benefit for which he was responsible.

#### **Decision**

The Federal Labor Court rendered a decision that obliged the pension protection fund to pay the transition grant. For the Federal Labor Court, the transition grant is a company pension benefit for which the pension protection fund has responsibility according to sec. 7 para. 2 Act on the Improvement of Company Pensions (Gesetz zur Verbesserung der betrieblichen Altersversorgung, BetrAVG). The necessary providing purpose is considered as given by the Federal Labor Court. In particular, it is important that the benefit in question shall serve to ensure the improvement of the employee's standard of living under pensionable income.

The court ruled that this applied here, because the transition grant serves to ease the economic adjustment in the event of retirement and secure the longevity (biometric) risk of the employee - covered by the BetrAVG.

Furthermore, the Federal Labor Court considered it irrelevant that the appropriate shop agreement set the payment of transition grants under the condition that the employee should retire from this employer immediately following his active service.

If the employee, before his retirement, leaves the employer permitting a transition grant with a non-forfeitable benefit, such provision would be regarded as invalid in a shop agreement according to the Federal Labor Court (sec. 19 para. 3 BetrAVG in connection with sec. 134 Civil Code (Bürgerliches Gesetzbuch, BGB)).

#### **Notes for the legal practice**

With its decision, the Federal Labor Court reiterates its broad understanding with regard to the subject of company pension schemes. Transition grants will also be classified as company pension services in the future and, thus, secured by the pension protection fund. It is to be expected that the pension protection fund will adjust its contributions accordingly.

Additionally, it will be of considerable importance in practice that employees, who leave with non-forfeitable benefits, can claim a (pro rata) transition grant – despite different shop agreements – even if they do not retire directly after their employment relationship with the respective employer.

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