

Habemus Coalitionem? – The Coalition Agreement and Employment Law

It is (perhaps) done. CDU/CSU and SPD have come to a coalition agreement after hard negotiations. God only knows, however, whether this „GroKo“ ("Grosse Koalition") will actually form the next government for our country. In particular, the outcome of the member's poll of the SPD at the beginning of March still remains to be seen.

Even if nothing has been decided yet, and the provisions of the coalition agreement have to be formed into law during the legislative period, we would like to present a brief overview as an orientation on what the coalition agreement provides for some very interesting topics in the areas of employment and employment law:

TEMPORARY CONTRACTS

One highly controversial issue in the discussion, and one which was chosen by the SPD, for reasons that are not always understandable, to be the focus of discussion, is the topic of fixed-term contracts without objective grounds.

The coalition agreement provides that, in the future, an employer with more than 75 employees may only limit the term of employment of a maximum of **2.5 per cent** of his workforce without having objective grounds for the limitation. If this quota is exceeded, each additional limited-term contract will be deemed to be an unlimited contract.

Furthermore, a limitation without objective grounds is no longer supposed to be permitted for 24 months, but may only have a **term of 18 months**. Within that time period, a **renewal** is only supposed to be allowed **once** (instead of three times as is now the case).

Finally, the coalition has declared war on so-called "**chain limitations**": The limitation of an employment relationship is supposed to be unlawful in the future if an unlimited contract or one or several limited contracts of a total duration of five or more years had already existed with the same employer (exceptions for certain work - such as artists or football players have already been suggested). Previous assignments as a temporary employer of the person who now has a limited contract are also supposed to be applied to the maximum period of five years, provided this did not happen more than three years previously. Evidently, the goal here is to speed up putting employees into an unlimited employment relationship.

RIGHT TO LIMITED PART-TIME WORK

The parties to the coalition plan to introduce a **right to limited part-time work**, which had already been discussed in connection with a reform of part-time employment law and which would allow employees to temporarily reduce their work hours to enable them, for instance, to handle challenges within their family situation and to then return to their original work hours after the reduction.

This claim is only meant to apply in businesses that generally have more than 45 employees. For businesses with 46-200 employees, a limit on the reasonable number of entitled employees is supposed to be introduced, which would be set at one employee per 15 employees. When calculating the reasonable number, the first 45 employees are to be included in the count. If the limit has already been reached, the employer is to be allowed to refuse the next application. The employer is also to be allowed to refuse limited part-time work if this is for less than one year or for more than five years. The parties to collective bargaining agreements are to be free to agree on rules that are different from this, however.

If limited part-time work is granted, a renewed reduction of work hours is not to be possible until one year after the end of the limitation at the very earliest.

QUESTIONS CONCERNING WORKING TIME

With respect to working time, the coalition agreement provides, first of all, that the possibility of experimenting with innovative ideas is to be opened up for businesses bound by collective bargaining via a **clause allowing for amendments in collective bargaining in the Working Time Act**. This is supposed to open up opportunities in the quite rigid provisions of the Working Time Act to allow for more autonomous work and more operational flexibility in an increasingly digitalized employment environment. On the basis of collective bargaining rules, it is also supposed to be possible, for instance, to regulate the weekly maximum working time with more flexibility in shop agreements.

Other rules such as rules governing so-called "**work on demand**" is also planned. To give employees more planning and income security here, it is supposed to be set down under law that the share of work on demand and additional work to be compensated for may not be less than 20 per cent and not more than 25 per cent of the agreed minimum working time. In the absence of an agreement on weekly work hours, 20 work hours

are deemed to apply. In the event of sickness and on legal holidays, the average earnings of the last three months are to be set down as the mandatory basis of payment.

LIMITATION OF PROTECTION AGAINST DISMISSAL FOR RISK TAKERS

A statement that is of particular interest to the financial sector is somewhat hidden in the coalition agreement: The coalition plans to put the **risk takers within the meaning of Sec. 2 (8) of the Remuneration Ordinance for Institutions (IVV)** on the same level as executive employees within the meaning of the Unfair Dismissal Act if their basic salary is greater than three times the assessment ceiling for contributions to the statutory pension insurance. This means in particular that a motion by employer during litigation due to a dismissal to sever the employment relationship against payment of a settlement will no longer require any grounds. According to the stated intention of the coalition parties, this is supposed to make Germany more attractive for financial institutions as a place to do business with a view to Brexit.

EVALUATION OF THE TEMPORARY EMPLOYMENT ACT

The recently amended Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*) is supposed to be evaluated in 2020. A specific change in this law, however, is not provided for in the coalition agreement.

WORKS CONSTITUTION LAW

The coalition agreement contains the explicit statement that the coalition wants to **make it easier to establish and vote for works councils**. To achieve this goal, a simplified election process is supposed to be mandatory for all businesses with 5 to 100 employees who are eligible to vote. For businesses with 101 to 200 employees, it is intended that a choice can be made between a simplified and a general election process.

In addition, the general **right of the works councils to take the initiative for advanced learning** is supposed to be strengthened. Employers and works councils are to consult one another on all measures for professional development. If they cannot agree, each side is to be able to appeal to a moderator to reach an agreement, but they are not obliged to reach an agreement.

Finally, continuing developments concerning **the cross-border relocation of company headquarters** will be followed with interest in light of the declared in-

tention of the coalition parties to **safeguard the national regulations on co-determination**.

QUESTIONS OF OCCUPATIONAL SAFETY

Here, the coalition agreement expresses the intention of reviewing occupational safety, particularly with a view to the **challenges of digitalization**. Studies that are already available at the Federal Employment Agency are supposed to be evaluated to this end.

CONCLUSION

Even if various public statements at the moment allege the opposite, it can be stated that the coalition agreement clearly **bears the handwriting of the Social Democrats** with regard to the employment law provisions. Aspects such as the greater flexibility of work hours and a reduction of the level of protection against dismissal for high-earning risk takers are to be welcomed. Other projects such as the restriction of limited contracts without objective grounds would further cut into the freedom of business decision-making. Should GroKo really be the new government and implement what has been advanced in the coalition agreement, employers in Germany will again face new challenges. It will then be necessary to consider how to meet these challenges.

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