

Once More: Reduced protection against Mass Layoffs? – The Suspense Continues!

INTRODUCTION

Especially in economically difficult times mass layoffs can belong to unpleasant but necessary business reality. In the past, it was necessary to avoid dangerous pitfalls in this context (cf. our [Client Newsletter 06/2023](#)). It was particularly grievous that the case law regarding lacking or incorrect mass layoff notices in the past often brought about the finding that all (!) of the terminations delivered on the basis of the notice were to be deemed legally invalid for this reason alone. On December 14th, two Panels of the Federal Labor Court (the 2nd and 6th Senate) dealt with questions surrounding this topic. Particularly one press release that has been issued in the meantime regarding a decision of the 6th Senate gives reason to sit up and listen:

FEDERAL LABOUR COURT, ORDER OF 12/14/2023, FILE NO.: 6 AZR 157/22

While the 2nd Senate of the Federal Labor Court most recently again decided in the summer of 2023 that at least the failure to include the information that “should” be provided under Sec. 17 (3) Protection Against Dismissal Act does not result in the invalidity of the terminations issued on the basis of the mass layoff notice (judgment of June 1, 2023 – File No. 2 AZR 150/22), the 6th Senate now had to address a case in which the required mass layoff notice was lacking entirely: After the litigation had already been stayed in anticipation of pending rulings by the ECJ, the Senate suspended the proceedings yet again. This time it did so with the spectacular notice that it intended to depart from its prior case law under which a termination notice issued under the scope of a mass layoff is supposed to be invalid if, at the time of the declaration of termination, there had been **no notice of mass layoffs or the notice of mass layoff was defective**.

This approach goes well beyond the topic of the consequence of the lack of information that “should” be given. Because the intention which has now been formulated by the 6th Senate is, however, at odds with previous rulings of the 2nd Senate, which has jurisdiction over cases of dismissal, the 6th Senate has yet again suspended the proceedings and inquired of the 2nd Senate whether the latter will be upholding its previous legal view. What line the court rulings will now take must be decided between the two Senates. The 2nd Senate is now called on to respond to the question presented by the 6th Senate. Should the 2nd Senate want to hold fast to its prior, rather stricter case law, it can be expected that a decision on this question will

be issued by the so-called “Grand Senate”. That body decides if one Senate of the Federal Labor Court wants to deviate in its position on a certain legal question from another Senate. Even if the question is not definitely answered yet, one cannot fail to see that something has been set in motion.

CONSEQUENCES FOR PRACTITIONERS

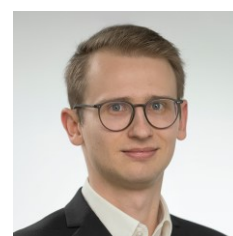
There would be a noticeable alleviation for practitioners if the view of the 6th Senate was able to prevail. Because of the assumed invalidity under the previous case law, the notice of mass layoff often hung over many personnel reduction measures like a black cloud. The legal consequence that termination notices were invalid was also hard to understand because the purpose of the notice of mass layoffs is primarily to prepare the Employment Agencies for an increase in job seekers. There is thus hope that the new viewpoint of the 6th Senate will prevail. It must be emphasized, however, that this would not result, of course, in making the notice of mass layoff completely obsolete. It appears conceivable that, as a consequence of a change in the case law, the legislator would link a violation of Sec. 17 Protection from Dismissal Act to other sanctions (such as fines).

Please do not hesitate to contact us if you have questions concerning this topic. If you would like to be included on our mailing list of the subscribers to our free newsletter, please send us a brief [email](#) with your request.

CONTACT



Dr. Henning Reitz
h.reitz@justem.de



Fabian Göllner
f.goellner@justem.de

<https://www.justem.de/>