



## Press Release

### HIGHER COMPENSATIONS FOR WORKS COUNCIL MEMBERS INADMISSIBLE?

Erfurt/Munich, 20 March 2018 - Are higher compensations for works council members admissible or do they violate the prohibition on preferential treatment? The Federal Labour Court (BAG) will negotiate this issue tomorrow, on Wednesday, 21 March 2018 (7 AZR 590/16).

A works council chairman should have been dismissed after 30 years of activity, since he was accused of sexual harassment of a colleague. As a member of the works council he enjoyed special protection against dismissal. This then resulted in proceedings before the Labour Court. Before the termination of the proceedings, the works council chairman concluded an extrajudicial termination agreement with the employer which, *inter alia*, provided for a compensation in the amount of EUR 120,000. Subsequently, the employee representative obviously regretted his decision and argues now that the termination agreement is void. The high compensation violates the prohibition on preferential treatment of works council members.

"The first question that arises here is whether the works council chairman is entitled at all to refer to the inadmissibility of his own preferential treatment. Usually, this is an abuse of law," says *Dr. Wolfgang Lipinski*, Labour Law Specialist and Partner at the international commercial law firm BEITEN BURKHARDT. "It is common practice that the litigation risk is taken into account when calculating the amount of compensation. Employees with a special protection against dismissal thus have a better negotiating position. Therefore, works council members can negotiate higher sums," explains the lawyer. He adds: "Should the BAG consider this to be an inadmissible preferential treatment, this would lead to considerable legal uncertainty in practice. Since employers, who conclude a termination agreement with a works council member, can never be sure that this termination agreement is effective if the member has negotiated well."



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Please do not hesitate to contact *Dr. Wolfgang Lipinski* for further information, statements and guest contributions.

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