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WEEK OF TRUTH FOR MINIMUM WAGE?

Munich, 04 September 2017 – On 06 September 2017, the German Federal Labour Court (Bundesarbeitsgericht) will address extremely controversial issues in connection with the statutory minimum wage during several proceedings. Firstly, it will decide whether special benefits from the employer like commissions, holiday allowance or the employer's contribution to capital formation are deductible from the minimum wage (5 AZR 441/16). Further cases involve the performance-related remuneration with regards to the so-called piecework (5 AZR 317/16 amongst others).

"With the German Minimum Wage Act (Mindestlohngesetz), the German legislator gave stones instead of bread to practice. It failed to provide clarification with respect to central issues," explains Wolfgang Lipinski, Labour Law Specialist at the international commercial law firm BEITEN BURKHARDT and expert in this area. "Once again the labour courts will have to take care of clarification. Let us hope that the Federal Labour Court will provide practice with helpful guidelines."

In the first case, a shop assistant for products of interior decoration did receive remuneration above the minimum wage. However, she claims that various elements of her remuneration cannot be counted to the minimum wage. Consequence: These elements need to be deducted from remuneration. As her remuneration will consequently fall below the minimum wage, she requests the company to re-pay the difference. The elements in dispute are monthly commissions, bonuses for "returns" from the issue of discount cards, bonuses for profits from sewing services, holiday allowance due to a collective agreement and the employer's contribution to capital formation. "It would be desirable that the Federal Labour Court in particular clarifies in how far commission payments are deductible from the minimum wage," says *Wolfgang Lipinski*. "Also in industries, in which minimum wage is an issue, commission payments are popular," states the Lawyer.

In another case, a basic hourly wage of EUR 6.22 was agreed with an assembly assistant. Above that, she was able to reach a calculated performance bonus of up to 37% of the basic wage for the achieved hourly quantity. As the employee regularly achieved a better-than-



Press Release

average performance and therefore received the full performance bonus, she always obtained an hourly wage of EUR 8.52 in the decisive period. She now claims payment of a basic wage in the amount of the minimum wage of EUR 8.50 applicable at that time plus the piecework bonus of 37%.

"The essence of the matter holds a social explosive force," says *Lipinski*: "The employee stood out through special achievements, which, however, were normal for her," explains the Lawyer. "Does this special achievement also require special payment in addition to the minimum wage?" asks the Lawyer. "This decision is of the utmost importance for many companies as under certain circumstances it affects the complete operational wage structure," says *Lipinski*.

Dr Wolfgang Lipinski is a Labour Law Specialist and a Partner at BEITEN BURKHARDT's Munich office. He is available for further information, statements and guest contributions.

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