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Euroview

Employment

Germany: employers under a duty to ensure that working time limits are observed

The Cologne State Employment Court recently handed down its judgment in a case concerning working time (case reference 5 TaBV 28/09).

Under the German Hours of Employment Act, an employee's daily working hours are generally not allowed to exceed eight hours. The Act also stipulates that an employee must have an uninterrupted rest period of at least 11 hours at the end of his working day.

Here the employer and the Works Council had entered into a legally binding Works Agreement that the working day should begin no earlier than 7.00am and finish no later than 7.30pm. Some employees, however, voluntarily worked beyond 7.30pm and as a result the Works Council brought a claim against the employer.

The State Employment Court ruled that where working hours have been agreed in a Works Agreement, the employer is under an active duty to ensure that the employees observe those time limits, otherwise it risks being fined. The Court even said that ensuring that employees do not exceed the agreed working hours could mean the employer locking them out of its premises or closing down the communication systems, though this seems most unlikely in practice.

France: employee's suicide highlights employers' psycho-social responsibilities

The suicide of a France Telecom employee in August 2009 has resulted in the criminal prosecution for accidental manslaughter by the Besancon Prosecutor's Office of both the employer and the individual manager of the area where the employee worked.

Under Article L.4121-1 of the French Labour Code, an employer has a statutory obligation to prevent occupational risks which may affect the health and safety of its employees. Furthermore, French law has established that the concept of 'health' covers not only physical but also mental health. If the employer had by its mismanagement or negligence killed the employee outright it could have been prosecuted. The intervening fact of suicide need not act as a bar to this if it can be shown beyond reasonable doubt that the employee's mental distress (a) led him to kill himself and (b) was caused by the employer's breach of duty. Nonetheless, the evidential hurdles a prosecutor would need to clear to establish the necessary chain of causation are very few and far between. If a number of employees in the same employer committed suicide, however, it could be imagined that those hurdles may become easier to surmount. As under English law, the prosecution of an individual manager implies a high degree of personal culpability for the employee's state of health, rather than just holding the managerial baby when the suicide occurred.

Practical implications - This case highlights the importance of employers having a robust risk management policy in place. The French Government has recently recommended that larger companies should enter into discussions with Trade Unions in respect of their responsibilities concerning psycho-social risks and has implemented a 'name and shame' policy for those companies which fail to do so.

Other practical steps include training managers to identify, assess and respond to potential situations concerning stress in the workplace, as well as having a clear, comprehensive policy for handling complaints or allegations of stress and harassment. It is also important that any such complaints are dealt with by a trained team.

"The suicide of a France Telecom employee ...resulted in the criminal prosecution ...of both the employer and the individual manager of the area where the employee worked."

Spain: who is liable in a work-related accident?

The Spanish Supreme Court recently held that a company is not responsible for an accident which occurs on its premises but not in its workplace (i.e. the place where it carries out its business activities) if the injured employee works for a subcontractor company which carries out a different business from that of the company.

The case concerns a labourer employed by a subcontractor who was working on the demolition of a building belonging to the company. The employee was untrained and suffered a serious accident which resulted in a permanent disability. He issued a claim against the Spanish State Social Security, the company whose building was being demolished and the subcontractor company (his employer).

The Madrid Supreme Court held that both the company, which operates in the glass industry, and the subcontractor company, which operates in the construction sector, should pay 50% of the State's financial assistance to the employee for his permanent disability.

In reaching its decision that only the subcontractor company was liable in respect of the accident, the Spanish Supreme Court based its reasoning on two issues:

- the business activities of the company and the subcontractor company were not the same and therefore under Spanish law, the responsibility for health and safety issues lay with the subcontractor company as the claimant's employer; and
- joint liability would only have arisen if the accident had occurred on the glass company's **actual** work premises. As the premises on which the employee suffered the accident were not a place where the company was carrying out its business (the premises were being demolished) the health and safety responsibilities fell wholly on the subcontractor company.

In order for joint liability to be established in a workplace accident in Spain, it is therefore necessary for:

- the accident to occur in the actual place where the company/owner of the premises carries out its business activities; and
- the business activities of the company and the subcontractor company be the same.

"joint liability would only have arisen if the accident had occurred on the glass company's actual work premises."

United Kingdom: Labour Government pledges not to renegotiate EU social laws

With the Election on 6 May 2010 dominating the UK news, the governing Labour Party has pledged not to try and renegotiate or undo any European laws governing social rights if elected back into power.

The promise is contained in a short chapter on a "Strong Britain in a Reformed Europe" in the Party's election Manifesto, published on 12 April.

One of the most controversial pieces of European social legislation for the UK is the Working Time Directive, which limits the average number of working hours to 48 per week. The UK has an opt-out from the legislation which the Labour Government has promised to maintain if it remains in power.

If elected to power, a new Conservative Government would be likely to seek to make changes to certain aspects of EU social and employment legislation. However, what the parties may say and what they might do are by no means necessarily the same, so it remains to be seen what will actually happen after 6 May 2010!

FURTHER INFORMATION

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