
PRESS RELEASE

Become an employee with a click? - Employers watch out for crowdwork offers

Munich/Erfurt, 30 November 2020 - The Federal Labour Court (Bundesarbeitsgericht, BAG) will decide on Tuesday, 1 December, 2020, whether a few clicks in an app offering smaller jobs can create an employment relationship. Contractors would thus enjoy all the privileges that the status of "employee" offers: Recreational leave, protection against dismissal and, in the present case, continued employment in an employment relationship of indefinite duration (9 AZR 102/20).

The defendant offered, via a website and an app, various orders from its customers to a variety of contractors, the crowd. The plaintiff registered as a crowdworker via the app and concluded a basic agreement with the defendant for this purpose, which entitled him to accept orders within a radius of 50 km and to work within a time slot of two hours. Under the agreement, he carried out individual assignments such as checks on the presentation of goods in retail outlets and petrol stations. There was no obligation to make offers by the defendant or to accept them by the plaintiff. After one year of cooperation, the defendant terminated the basic agreement by email. The crowdworker, however, complained that he had become an "employee" after the conclusion of the basic agreement, had earned a large part of his livelihood from this source of income and enjoyed the protection and privileges that such a status entails: He sued for remuneration, leave and continued employment.

The lower instance, the Regional Labour Court in Munich, ruled that in order to be an employee, an employment relationship was required and that, in any event, the basic agreement did not establish such a relationship. The plaintiff's economic dependence would not be sufficient to justify an employment relationship. There would be a lack of the "personal dependency" expressly standardised by law with regard to place, time and content of the provision of services. It remained open whether a temporary employment relationship could be established by clicking on an individual, time-bound contract.

"The ruling could have serious consequences for employers who offer small orders via apps or websites if the BAG assumes the existence of an employment relationship. Since then employers would have to fear that they would have to sign an employment contract for every job they accept, i.e. every click in their app - with all the consequences that entails," says Dr Thomas Drosdeck, lawyer at the international commercial law firm BEITEN BURKHARDT and head of the employment law team at the Frankfurt office." It will depend on how the BAG classifies the indirect instruments for disciplining the microtasker and in this context under-

stands the characteristics of 'heteronomy' and 'binding instructions' in the term and concept of employee codified in Section 611a German Civil Code (Bürgerliches Gesetzbuch, BGB). French supreme court case law considers the pressure of assessing the performance of each individual work assignment, that there is a risk of being cut off from follow-up contracts in the event of underperformance, to be so alienating that it leads to employment of crowdworkers in France. The Regional Labour Court in Munich had seen this differently. It is therefore exciting to see how the BAG will decide in view of the internationally differentiated approach," says Drosdeck.

Dr Thomas Drosdeck is available for interviews, guest contributions etc. on this topic.

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