



## Press Release

### **COULD CHRISTMAS BONUS AND VACATION PAY BE COUNTED TOWARDS THE MINIMUM SALARY?**

Munich, 24 May 2016 – Tomorrow the Federal Labour Court is dealing with the question whether so-called special payments, such as, for example, "Christmas bonus and vacation pay" may be counted towards the statutory minimum salary (Case No. 5 AZR/16).

The employer had entered into a works agreement with the works council. Such a works agreement applies, in general, to all employees of an enterprise. According to the works agreement the "Christmas bonus and vacation pay", which pursuant to the employment contracts had been paid in the amount of each half a gross monthly salary together with the May and November salary, were now "divided by twelve" and paid monthly. Thus, the amount paid monthly (basic remuneration and a twelfth of the special payments) exceeded the relevant statutory minimum salary. Previously, the amount paid (without the twelfth of the special payments) was lower.

An employee disagreed. He wanted the special payments to be continued and, in addition, the difference between his present monthly salary and the relevant statutory minimum salary. He argued that the special payments should not be counted towards the minimum salary, since the vacation pay would meet the increased financial demand during the holidays while the Christmas bonus would honour the employee's loyalty towards the company.

The previous instances dismissed the action. And quite rightly, said *Wolfgang Lipinski*, specialist lawyer for labour law and Partner with BEITEN BURKHARDT

*Dr. Wolfgang Lipinski* is specialist lawyer for labour law and Partner with the international law firm of BEITEN BURKHARDT, and acknowledged expert in minimum salary issues: "In the particular case payment of the vacation pay was not linked to the taking of vacation, and also the Christmas bonus was paid without certain conditions being fulfilled. Thus, the special payments were the remuneration for the work and can be counted towards the minimum salary."

As far as the classification of the decision of the Federal Labour Court is concerned, Mr.



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*Lipinski* means: "It could be a landmark decision in connection with the statutory minimum salary. If the Court admits the present arrangement within the scope of the works agreement, then new possibilities will be opened up for the companies."

*Dr. Wolfgang Lipinski* is specialist lawyer for labour law and Partner with BEITEN BURKHARDT Rechtsanwaltsgesellschaft in Munich.

He will be available for further information, statements and guest contributions.

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- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks as well as the public sector.