

GERMAN EMPLOYERS MUST RECORD THE WORKING TIME OF THEIR EMPLOYEES!

Sep 16, 2022

The Federal Labor Court of Germany reached this momentous decision on September 13, 2022 (file no. 1 ABR 22/21^[1]).

In the underlying proceedings, the issue between the works council and the employer was whether the works council could demand the introduction of a time recording system on its own initiative. The Federal Labor Court found against the works council but on the basis that a legal obligation already exists for employers to do so. And this is expected to be held to apply to all employers, regardless of whether or not a works council exists in the company.

Surprisingly, the Federal Labor Court derived such an obligation from EU law in combination with the existing German Occupational Health and Safety Act (*Arbeitsschutzgesetz*). The ECJ (European Court of Justice) had ruled in 2019 that employers are legally obliged to set up an objective, reliable and accessible system to measure the daily working time worked by each employee. However, the German legislator had failed to implement the decision of the ECJ. The Federal Labor Court has now clarified employers' obligations in this respect and this is likely to end trust-based working time.

The reasons for the decision are awaited with great interest and will hopefully provide more information on concrete implementation obligations for employers. In any event, the German legislator is now under massive pressure to act immediately and employers will have to review their existing time recording scheme.

We will keep you up to date with a news flash in due course. If you have any questions in the meantime, please feel free to contact our German Employment & Labor Team.

[1] Please note that currently only the press release of the decision of the Federal Labor Court is available.

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