Abstracts AuR 2 / 2018

Burghard Kreft: Working time
AuR 2/2018, p. 56
Working time is subject of health and safety in the form of the Working Time Act (ArbZG) as well as of works councils' co-determination under section 87 (1) Nr. 2 and 3 Works Constitution Act (BetrVG), (at times) section 99 BetrVG and of individual and collective contractual arrangements.
Under health and safety aspects, it is about limitation of working time to a maximum permissible threshold and its interruption through necessary rest periods in order to avoid health endangering impacts on the employees. The paper describes baselines of the German Working Time Act's rules and limits to flexibility according to it, which are to be tested constantly for their conformity with EU law in the directive 2003/88/EC. The question which activities constitute »work« under German and European rules is of particular importance. There is no definitive answer to this question yet for diverse employee duties and activities for the benefit of others.
For co-determination under sect. 87 (1) Nr. 2 BetrVG the question is, on which weekdays and concrete daytimes employees shall work, i.e. when exactly does working time start and end? In this context as well, it is of importance which activities are »work«, e. g. whether putting on protective clothing at the work place counts as work. For co-determination under section 87 (1) Nr. 3 BetrVG an alteration of the usual working time volume may only be »temporary«, for co-determination under section 99 BetrVG the increase of the hitherto existing volume must be »significant«. The paper describes the problems in detail.
It must be resolved in individual contracts to which temporal extent the employee owes work at all. Here, section 307 Civil Code (BGB) requests sufficient clarity, in particular regarding the agreement for which temporal work extent the employer owes which reimbursement. Here as well it has to be determined what belongs to reimbursable »working time«. This is not necessarily coinciding with the health and safety or the co-determination realm.

Stelios Tonikides: Interruption of rest periods through minor amounts of work
AuR 2/2018, p. 67
Pursuant to section 5 (1) Working Time Act (ArbZG) employees must have an uninterrupted rest period of at least 11 hours after having accomplished their daily working time. »Uninterrupted« in the sense of section 5 (1) ArbZG means that the rest period of 11 hours must compound a contiguous stretch of 11 hours. In this context there is general consensus that an interruption of the rest period in terms of section 5 (1) ArbZG results in the obligation to grant the employee a new uninterrupted rest period of 11 hours. It is however disputed whether a new start of the rest period must be inferred in cases of minor amounts of work, e. g. writing and sending a short e-mail, a short telephone call, closing doors or switching on/off lights. While parts of the judicial literature negate this, probably the majority opinion assumes that even when the interruption is minor the interrupted rest period starts again. The interpretation of Art. 3 Working Time Directive using the usual interpretation methods (grammatical, historical, systematic and teleological) comes to the conclusion that a de minimis threshold for minor amounts of work cannot be substantiated legally. This interpretation result is binding for the interpretation of section 5 ArbZG, since the Working Time Directive, pursuant to its Art. 23, grants a minimum protection standard which cannot be undercut.

Kenji Takahashi: Effects of digitalization on working world and labour law in Japan

AuR 2/2018, p. 70

Digitalization progresses in Germany as well as in Japan. In both countries, big data is developing; collected data are analysed and processed by means of the Internet of Things (IoT). Networked work procedures are increasing in Japanese companies. The japanese economy has strongly profited from the increasing digitalization of economy and working world. The Japanese electronic industry above all has competitive advantages because of its digital competence on the Asian as well as on the European market. In Germany and in Japan flexible working time arrangements have come into the legal focus.

In Japan, the MLIT (Ministry of Land, Infrastructure, Transport and Tourism) has established that in 2013, about 2.6 million employees (about 4.5 % of all employees) worked as teleworkers in home offices. In addition, automatization with artificial intelligence (AI) and robots will progress. The future development of AI and its progressing usage are positive and negative at the same time. AI and IoT will replace human workforce, and »industry 4.0«, IoT and the development of AI are the core of a digitalized working world. By now, this exerts serious impact on labour and social law in Germany and Japan. The paper describes and discusses in detail these manifold effects on working world and labour law in Japan.

Thomas Lakies: Three years general minimum wage – stagnation and consolidation

AuR 2/2018, p. 74

There will be no increase of the minimum wage in 2018. The minimum wage amounts to 8.84 € gross – like in 2017. The next increase will follow in January 2019. Consolidation means that the transitional provision for newspaper delivery staff and for collective agreements has expired on 31 December 2017. And jurisdiction has cleared many controversial points. The right to minimum wage is a »normal« right to remuneration. Minimum wage has to be paid for all services the employer requests from the employee based on his right of direction. Minimum wage has to be paid for on-call duties and stand by, but not for home-based on-call time. According to the Federal Court of Labour jurisdiction, all payments from the employer which are part of the remuneration count towards the minimum wage. Payments which are independent from work provided, e.g. reimbursement of travel costs, or which serve a special legal purpose do not count. »A special legal purpose« exists for the extra pay for night work, which the Working Time Act (ArbZG) provides. They do not count as part of the minimum wage. For other bonuses, for example general shift work bonuses or bonuses for work on Sundays and public holidays there is no legal basis. They can count towards the minimum wage, unlike capital-forming benefits, which do not count as part of the minimum wage, but are to be granted additionally. Minimum wages for certain sectors apply side by side with the general minimum wage. Here, some amendments have come into force in January 2018.