

Abstracts AuR 3 / 2018

Christiane Brors: Is there a neutrality concerning religion or conviction? The influence of the ECJ's judgments Achbita and Bougnaoui on German labour law

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In the cases Bougnaoui and Achbita the Court dealt with the question of whether the employer is allowed to prohibit wearing Islamic head scarfs while being at work. In Bougnaoui the Court makes clear that customers' expectations seized by the employer do not constitute a justification pursuant to Art. 4 Sec. 1 Dir. 2000/78/EC. In Achbita, the ECJ assumes a »principle of neutrality« in ways of religion or conviction developed by the employer concerning employees with customer contact as indirect discrimination. Taken into consideration the ECJ's previous legal authority, it suggests itself to consider this order to be direct discrimination as it applies to religions prescribing non neutral clothes. A »principle of neutrality« cannot be justified by stating that employer's interest concerning a »neutral« appearance always prevails employees' freedom of religion. On the one hand, it cannot be assumed that the religious statement is ascribed to the employer at all. On the other hand, an absolute »principle of neutrality« is disproportionate. In the case Achbita, the ECJ states that for a »principle of neutrality« to be justified indirect discrimination, it has to be implemented systematically and coherent. This is not the case in secularist nations like Germany. There is no consistent system in public service. Thus, the Federal Constitutional Court is able to keep on insisting that there is a conflict at work as a requirement for the prohibition of Islamic head scarfs.

Sarah Lillemeier: Equal pay requirements of a gender-neutral job evaluation and remuneration

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The basic principle of »equal pay for equal work or work of equal value« (Art. 157 TFEU) may only be complied with by using non-discriminating and gender-neutral basic processes based on the same criteria for male and female employees. Analytic as well as summary processes concerning job evaluation may be gateways for indirect discrimination with remuneration. If not all aspects are kept in mind (and fields of activity dominated by women are therefore wrongfully less valued), job's psychosocial requirements and burdens will often remain out of consideration. The process and implementation of job evaluation in matters of discrimination may be revised by using different instruments, especially the so-called »Paar-Vergleich« in the »EG-Check«.

Godela Linde: Sexual harassment is not tolerated

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The treatment of sexual harassment in labour law is different from the treatment of other breaches of contract, as the employer is not allowed to tolerate such behaviour and has to punish it. He is obliged to enhance prevention and therefore to organize his company accordingly. The possibilities range from the working places' arrangement to termination without notice and warning. Except for the command to act in matters of sexual harassment, this is in line with the general principles under labour law. Accordingly, it's about preventing such behaviour using the least stringent means.

The article introduces examples of legal authority and its development. The hierarchical distribution of roles between male molester and female victims is pointed out as well as the role of works councils, victims' rights and existing deficits.

Deter: The Influence of liberalism on industrial labour law in Prussia

AuR 3/2018, p.G9

The article is about the consequences of the market freedoms' introduction in Prussia for workers in the 19th century. It pays special attention to the creative potential of liberalism concerning the basic principles of employment contract regulations. The chronologic starting point is the introduction of commercial freedom providing a contrast to the Prussian Allgemeines Landrecht of 1793. However, the employment relationship remained overlain by different links to the police. These links were reflected in the breach of contract being punishable and were in opposite to a free employment contract regulations. The links to the police made it difficult for tradesmen to use good market situations for themselves. The result was distance between workers and liberalism, getting stronger in the second half of the century. As a result, liberalism changed between pleas for individual freedom, as a positive aspect for workers via the freedom of association, and conservative-patriarchal models. When it came to the enforcement of the freedom of association, liberal interests and tradesmens' interests corresponded once again. The hope attached to this, the development of a broad middle class, was only partly fulfilled. As the social question arose, liberalism lost its influence on tradesmen and industrial workers.