LEGAL Q&A | LABOR COURT PROCEEDINGS

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Labor court proceedings are of great importance in Germany. Employees and employers often meet again in court, especially when it comes to the termination of their employment relationship. The German labor court procedure has several particularities that must be observed by the employer when having a legal dispute. This Q&A two pager gives an overview of labor court proceedings in Germany.

1. Which courts are responsible for labor disputes and what are the stages of appeal?

There is a separate and exclusive jurisdiction for labor law matters, which is part of the civil jurisdiction. The first instance of labor law jurisdiction is the local labor court (*Arbeitsgericht*), the next highest is the Regional Labor Court (*Landesarbeitsgericht*) and the highest is the Federal Labor Court (*Bundesarbeitsgericht*).

The decisions of the local labor court can be reviewed by the Regional Labor Court by means of appeal. Appeals may be founded either on facts or on legal and procedural grounds. However, appeals against decisions of the local labor court can only be made if the decision of the local labor court itself has clearly allowed the appeal because of its fundamental importance or if the amount in dispute is higher than EUR 600. Moreover, decisions of local labor courts can always be appealed against if they concern the (non)existence or termination of an employment contract. The appeal must be filed within one month after receiving the notification of the decision; however, the substantiated statement of appeal can follow one month after filing the appeal.

Appeals against decisions of the Regional Labor Court are reviewed by the Federal Labor Court. Nevertheless, an appeal to the Federal Labor Court must generally be authorized by the decision of the Regional Labor Court and is restricted to legal and procedural grounds.

2. How are the instances of labor jurisdiction composed?

The first two instances of the labor courts, *i.e.*, local labor courts and Regional Labor Courts, are each composed of one professional judge and two lay judges. Lay judges support the professional judge with their expertise and experience from either the employee or the employer side.
There is always one lay judge each with an employee and an employer background respectively. The Federal Labor Court is headed by three professional judges and supported by two lay judges.

3. What does the subject matter jurisdiction of a labor court depend on?

The labor court jurisdiction basically covers all individual disputes between employer and employee arising from the employment relationship or its termination. Furthermore, the labor courts are also competent for disputes under collective law, especially between an employer and a works council (*Betriebsrat*). In contrast, labor courts are generally not competent for disputes between managing directors and board members of corporations as these are generally not classified as employees. Therefore, in principle, they are subject to the general jurisdiction of the civil courts.

4. What does the local jurisdiction of a labor court depend on?

Legal actions against the employer must, in principle, be brought before the labor court in the area the legal entity's administrative headquarters are located. However, the plaintiff may also choose to file a complaint before the labor court of a district in which only one of the employer's branch offices is located. Furthermore, the employer can also be sued in the labor court in whose area the employee usually carries out his or her work, which is particularly relevant for employees working remotely. Even if its registered office or a branch is located in another EU or a non-EU country, a company with Germany-based employees can in any case be sued before the local German labor court in the area the employee usually carries out his or her work.

Employees on the other hand may only be sued in the place where they are domiciled.

5. What are the essential principles in labor court proceedings?

The German labor court procedure is basically a civil procedure and mainly follows the same rules as any other civil litigation in Germany. All proceedings are public. As a rule, oral hearings take place before the court of first instance delivers a judgment (*Mündlichkeitsgrundsatz*). The judgment must be founded on evidence provided by the parties. The parties have in principle full control of the labor court proceedings (*Dispositionsgrundsatz*). They may at any time settle the dispute by withdrawing the claim or by agreeing on a settlement.

Nevertheless, there are a few peculiarities before labor courts. Above all, labor court proceedings are characterized by effective employee protection. Special rules of labor law jurisdiction include, for example, the primacy of settlement, procedural equality of the parties, keeping legal costs to a minimum and the acceleration of labor court proceedings.

6. What is the usual course of labor court proceedings?

Labor courts proceedings are initiated by the plaintiff filing an action with the labor court. Although there is no obligation to involve a lawyer in the first instance, there are numerous pitfalls that make it imperative to seek legal advice.

After the action has been filed, the next step is a particularity of labor court proceedings: Every action filed is necessarily followed by conciliatory hearings, the aim of which is to reach a settlement between the parties. In accordance with the principle of acceleration in labor court proceedings, the conciliatory hearing is regularly scheduled between six to eight weeks after the action was filed. There is no general obligation for the parties represented by a lawyer to appear in person, but the judge may order it if he or she considers it helpful to clarify the facts of the case.

If the dispute cannot be resolved in the conciliatory hearing or otherwise, *e.g.*, by agreeing on a separation agreement out of court, the presiding judge will schedule a main hearing as a next step. This usually takes place three to six months after the conciliatory hearing. The parties will usually be asked to present the facts of the case and the legal arguments in briefs within certain deadlines in preparation for the main hearing. Depending on the complexity of the case, further briefs and hearings may be necessary. Even at such later stage of the proceedings, the parties can still agree on a settlement. If the dispute is not otherwise resolved, the labor court decides by judgment.

7. Which party bears the burden of proof and what kind of evidence is admissible?

In principle, each party must prove that the requirements of the legal norm favorable to it are actually met. If the party with the burden of proof fails to provide evidence, the alleged circumstance will be treated as non-existent, so that the party with the burden of proof will underlie.

In labor court proceedings, a graduated burden of presentation and proof is imposed on the parties in certain disputes. For example, an employee who feels discriminated against must only prove the circumstantial evidence for his or her presumption. The burden of proof that there has been no violation of the provisions on protection against discrimination lies with the accused employer.

In some exceptional cases, the burden of proof is even reversed by law, *i.e.*, it is not the party claiming a right who must prove the prerequisites of the claim, but the opponent must prove their absence. For example, under certain conditions defined by statutory law, a joint operation of several companies is presumed. Such presumptions usually apply in situations where the party claiming a right does not have access to the required information while it is easy for the defendant to present respective evidence against it.

There are five types of admissible evidence: visual inspection, witnesses, expert witnesses, deed and examination of the parties. The types of evidence are basically qualitatively equivalent. The labor court itself decides in free assessment of evidence which evidence it will give which value.

8. What costs can be expected in labor court proceedings?

At first instance, each party bears its own costs. This serves to ensure that, in case of doubt, employees are not deterred from filing an action against the employer by the fear that they will also have to pay the employer's lawyer's fees if they lose the case. An exception is made if a settlement has been reached in which the parties agree on a different apportionment of costs. Otherwise, very few exceptions apply to this rule. Legal assistance is payed based on the Lawyers' Fees Act (*Rechtsanwaltsvergütungsgesetz – RVG*) or on an individual hourly basis as defined in an individual contractual fee agreement. However, in the event of a loss at a higher instance, the winning party may only demand reimbursement of legal fees up to the amount resulting from the application of the Lawyers' Fees Act.

In addition to their own lawyer's fees, the labor court charges the losing party the court fees and, if applicable, any expenses incurred (such as postage, copying costs, any fees for an expert or translator, *etc.*). The court fees are assessed on the basis of the amount in dispute. In the case of an action for protection against dismissal, the amount in dispute is usually a maximum of three months' salary. For example, in a dismissal case where the employee's regular salary amounts to EUR 4,000 gross, the court fee would usually amount to EUR 534. Under certain circumstances, however, no court fees are incurred at all. This is the case if the legal dispute is ended by a settlement in the first instance. In these cases, the labor court may charge at most any expenses incurred for postage or experts, if applicable.

9. How long do labor court proceedings usually take?

Generally, labor court proceedings take approximately 4-8 months in the first instance when they result in a court decision. However, over 80% of cases concerning termination of employment are settled before the local labor court. The background for this is that many employees file an action for unfair dismissal as they are required to in order to obtain a severance payment and/or avoid disadvantages in relation to unemployment benefits.

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