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German Employment Law Update

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Federal Labor Court rules on dismissal of company data protection officer: Dismissal possible only through termination of employment contract.

The plaintiff had been appointed data protection officer by his employer.

According to the first sentence of Section 4 f (1) of the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG), governmental and private organizations that use automated technology to collect, process or use personal data must appoint a data protection officer, who is responsible for compliance with the provisions of the Federal Data Protection Act. The fourth sentence of Section 4 f (3) of the Federal Data Protection Act stipulates that such appointments may be revoked for cause pursuant to Section 626 of the German Civil Code, which governs the dismissal of employees.

In the present case, the employer revoked the plaintiff's appointment as data protection officer eight years after the original appointment. The plaintiff successfully contested the revocation of his appointment through all instances.

In its judgment dated March 13, 2007, (9 AZR 612/05), the Federal Labor Court ruled that an appointment as data protection officer may be effectively revoked only in the context of termination of employment. The court reasoned that if an employee accepts an appointment as company data protection officer, the corresponding activities fall under and become part of that individual's employment contract. As a result, the appointment can be revoked only under those conditions that would otherwise govern termination. It is not possible to simply revoke the appointment.

The use of modern communication technology in the workplace (in particular the Internet, e-mail) has also made data protection an increasingly important aspect of labor law.

Most companies do in fact meet their legal obligations under the Federal Data Protection Act and have appointed data protection officers. However, despite formal compliance, data protection is considered a marginal issue by many companies. One unfortunate consequence is that the nature of the position of data protection officer is treated too lightly. The decision rendered in the present case is a typical example. What this means for corporate personnel management is that the position of data protection officer should be treated as one that requires a high degree of trust and loyalty and therefore be filled only by an individual who has demonstrated these qualities.

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If you need any advice or assistance in the area of German data protection legislation or any other area of German labour & employment law, please feel free to contact us.



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Imprint

Information and advice in this German Employment Law Update are not intended to be comprehensive legal support. They can not substitute individual legal counselling focused on each single case.

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