

The clock is ticking

Federal Labor Court rules travel time is working time

By Katharina Vorlaender

In a ruling on October 17, 2018, the German Federal Labor Court (*Bundesarbeitsgericht*) ordered that employees undertaking business travel abroad are entitled to their usual salary for time spent in travel. According to this new ruling, travel time must be considered working time and therefore must be remunerated. This decision was rendered for a technical employee in the construction sector. The reasons given by the court have yet to be published.

This article examines the potential impact of this ruling for companies, starting with the current approach and legal background.

In this context, a business trip means travel for work purposes, typically involving a journey of some distance.

Current approach: Full-time travelers and travel within the standard working time

A commute is not considered a business trip. Commute time is not considered working time and, therefore, does not

need to be paid. If employees are traveling within their usual working time for business reasons, this business travel clearly falls under working time and must be remunerated.

Employees whose job descriptions and positions include traveling – for example, sales representatives and truck drivers – must also be remunerated for time spent traveling, as traveling is part of their job. In this specific context, travel means work and, therefore, the employee must be remunerated for all travel/work time.

Current approach: Travel outside the standard working time

The most interesting scenario is an employee who, unlike a sales representative or truck driver, is not a full-time traveler, but who travels occasionally for business reasons outside the standard working time.

Let's assume the following scenario: An employee's standard working time is Monday through Friday from 9AM to



According to the new Federal Labor Court, travel time is now considered as working time, no matter the employee has to work or can rest during travel.

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6PM, including a one-hour lunch break. For client meetings from 10AM to 6PM on Wednesday, the employee travels to another city by train. The employee departs at 7AM and arrives home at 9PM.

Whether the travel time from 7AM-9AM and 6PM to 9PM is considered working time currently depends on what the employee is allowed to do during the travel time.

If the employer instructed the employee to prepare meeting or answer emails while on the train, the travel time before

and after the standard working time is also considered working time. If the employee is allowed to rest while on the train, this time from 7AM-9AM and 6PM-9PM is not considered working time.

Driving in a car is always considered working time, as employees do not have an opportunity to rest.

As a result, the employer needs to keep in mind the maximum working time, which is generally eight hours of work, including a one-hour break, then 11 hours of rest before the employee returns to work. →

Content of the new ruling from October 2018

A technical employee working in the construction sector traveled from Germany to China to work on a construction site for a couple of weeks. The outbound and return flights took 4 days in total. He requested his standard remuneration for the 4 days of travel, as he considered the time spent in the airplane to be working time.

In the context of the current approach, this travel time would not count as working time, as the employee was not required to work during the time spent in travel.

According to the new Federal Labor Court ruling, however this travel time is considered working time, even though the employee had the opportunity to rest during the flight.

“As a rule,” travel time now needs to be remunerated as working time when the employee is traveling exclusively in the interest of the employer.

Implications for the future approach

The new ruling seems to leave little to no leeway in the handling of business travel.

The decision was made for an employee in the construction sector, but the content of the ruling may be applicable to any employee. It strengthens employees’ rights.

The wording “as a rule” implies that there may be exceptions, – that is, cases that need to be treated differently. However, it will be difficult to define and demarcate sectors, professional groups or scenarios that should not fall under this new rule.

Frequency of travel

Travelers could be differentiated based on their frequency of travel. In internal company policies, some employers distinguish between frequent travelers and employees who travel occasionally. The difficulty will be determining how often an employee needs to travel to be classified as a “frequent” traveler.

Travel as an inherent part of the position

For employees such as sales representatives, travel time is currently already considered working time. The new ruling likely will not change this professional group’s job situation.

Leading executives and managers

One possible exception could be made for senior executives and managers. Traveling reflects the importance of these employees and is a demonstration of their responsibility and the leading position they hold within the firm.

According to the new Federal Labor Court ruling, for employees in these positions, travel outside the standard working time would also be considered working time. However, as the boundary between work and leisure often is not clear for employees in such positions, and given that senior executives and managers are usually very well compensated for their work, German jurisdiction might handle these employees differently than “normal” employees when it comes to payment of working time beyond the standard working time.

Conclusion

According to the new Federal Labor Court ruling, travel time is now considered working time, no matter whether the employee has to work or can rest during travel. Therefore, travel time on behalf of and in the interest of the employer before or after the employee’s standard working hours must be remunerated.

Considering the German Working Hours Act, this new ruling might be even more impactful for the future handling of business-related travel. An employee working eight hours a day is generally entitled to 11 hours of rest before the employee returns to work.

Carrying the rationale of the new ruling forward, an employee who travels for 13 hours by airplane needs to be remunerated for the travel time, no matter whether the time is spent working or resting – and the employee might also need to stop for a layover after eight hours of flying, as the travel time is considered work.

This ruling might, therefore, be especially challenging for employers who operate worldwide and whose employees have to travel long distances. ←



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