

Employment Law Update: German Federal Employment Court Implements ECJ Requirements on Forfeiture of Vacation Entitlement

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International Employment

The German Federal Employment Court (*Bundesarbeitsgericht*) ruled on February 19, 2019 (*Reference number 9 AZR 541/15*) that annual vacation entitlement can only be forfeited at the end of a calendar year if the employer previously advised the employee of his/her accrued entitlement and of the deadline by which untaken vacation would be forfeited.

For the press release of the German Federal Employment Court, please [click here](#).

German statute provides for a loss of annual vacation at the end of the calendar year, unless it could not be taken for operational reasons or for personal reasons, such as illness. Where vacation is carried over, it must in any event be taken by March 31 of the following year, when it lapses.

Before this new judgement, German case law required that the employee file an application for annual vacation, or lose it. If the application was declined by the employer, the employee could claim damages, with the effect that vacation could be taken even after the end of the calendar year, or paid out if the employment had terminated.

The principles were challenged by Mr. Tetsuji Shimizu, an employee of Max-Planck-Gesellschaft in Germany. When Mr. Shimizu's employment contract expired, he claimed for compensation of 51 untaken days' vacation. German courts referred the case to the ECJ, enquiring whether the German statutory provision on the loss of vacation entitlements was in line with European law, in particular Art. 7 of the Working Time Directive.

The ECJ ([*judgment dated November 6, 2018, C-684/16 Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. / Tetsuji Shimizu*](#)) held that national regulations may regulate the loss of vacation entitlements, but with the proviso that the employee had actually been able to take the annual vacation. The ECJ held that, accordingly, employers must inform employees in a timely fashion that their vacation entitlement will lapse at the end of the calendar year (or at the end of the time period for carry-over of vacation).

It is therefore recommended that employers in Germany inform employees in writing of their accrued entitlements and of deadlines for expiry, and retain copies of such notices in HR files. It remains to be seen what is considered "timely" provision of information, and whether these

new principles will be applied retroactively for 2018 vacation claims. Until national courts issue more detailed guidance employers are well advised to act early enough to enable all employees to take their entire annual entitlement before the end of the calendar year, to make sure that claims are not transferred indefinitely.

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