

## **No combination of employment periods as temporary worker and actual employee in Germany**

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Length of employment plays a key role for rights and obligations in an employment relationship. In companies with more than ten workers, for example, workers may invoke general protection against unlawful dismissal after a qualifying period of six months. Termination of employment by the employer will then only be possible where statutory reasons for dismissal are given.

### **Applicability of the Protection against Unlawful Dismissal Act**

In a recent decision, the Federal Labor Court clarified that periods of employment as temporary worker and direct employee cannot be combined, even when working in the same company. The decision referred to a dispute between an employer and a worker on the question whether the German Protection against Dismissal Act applied or not.

The worker was initially employed via a temporary employment agency. Subsequently, she was directly employed by the company as her 'new' employer for doing the same work. A few weeks later, however, her employment was terminated. The six-month limit would have been exceeded only if both time periods had been combined.

### **Assessment of collaboration impossible during temporary period**

However, the Federal Labor Court denied a combination of the two working periods. The qualifying period would serve as a time to get to know each other and to assess whether a permanent collaboration would be conceivable. For temporary workers, this would only be possible to a limited extent since the temporary employment agency was the employer and the only one exercising the employer function during this period.

### **Unwritten agreement**

In cases where the temporary employment agency as earlier employer and the company as 'new' employer jointly induce workers to change employers, the Federal Labor Court holds that this may be an indication of an unwritten agreement on the crediting of prior employment periods. Workers are then to be treated as if they had already completed the qualifying period at their 'new' employer.

### **Clear rules are necessary**

Specific employment contracts will be required to obtain legal certainty both for employers and for workers. Our professional attorneys will gladly assist you when drawing up employment contracts.

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