

Notice periods for sales representatives may be inappropriate - Commercial Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London - www.grprainer.com/en conclude: In a judgment of March 21, 2013 (File number VII ZR 224/12), the Federal Supreme Court (BGH) commented on the inappropriateness of a notice period for sales representatives. Thus, a standard provision used against a part-time sales representative, according to which the termination of a contract after a term of three years should be permissible only with twelve months notice effective at the end of a calendar year, is to be invalid due to inappropriate discrimination. Already, such a provision had not stood up to judicial control of substance under section 307, subsection 1, Civil Code (BGB). Such a clause would inappropriately discriminate against the sales representative contrary to the principles of good faith.

The BGH is of the opinion that other principles should apply to the employment of part-time sales representatives than to the employment of full-time sales representatives. It must be possible to terminate such employment more quickly than the employment of a full-time sales representative. To secure the livelihood of sales representatives, it must be required that a sales representative who is only employed on a part-time basis is not prevented from accepting a sales representative job with a competing company.

Sales representatives are defined as persons who are self-employed in a business with its own corporate risk, who is constantly obligated under contract to procure or conclude business transactions for other entrepreneurs and who undertake this on behalf of and in the name of others. During their contractual relationship, sales representatives are entitled by law to a commission for all business transactions that can be traced back to their activities. Even after termination of their contract, sales representatives also have a legally regulated claim against the entrepreneur if the latter still profits from the business relationships the sales representative had solicited during the term of the contract.

Sales representatives or persons who wish to collaborate with a sales representative should at an early time seek the advice of a lawyer with experience in commercial law.

Especially, a lawyer experienced in commercial law can help to enforce a sales representative's claims for compensation or commission or offer advice with regard to the possibilities of terminating a sales representative's contract in an individual case.

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Anlage: Bild

