



## **Management personnel and their special status in labour law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Düsseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: Executive employees, management personnel or managing directors occupy a central and special role within companies. They form, as it were, the interface between the workforce and the employer. They must take decisions, have special competences and yet are themselves often employees. The same rules of labour law do not, however, apply to them as they do to "normal" employees. The legislature has accounted for the special status of management personnel in companies by means of special regulations.

The definition of an "executive employee" plays a decisive role here. A fundamental distinguishing feature in this context is the way in which the work is actually structured, i.e. whether the employee is authorised as a rule to make independent decisions which influence the fate of the company. These could, for example, pertain to recruitment and dismissal or the general commercial power of attorney (Prokura). One must also consider that the German Working Time Act (Arbeitszeitgesetz) does not apply to executive employees. Issues concerning working hours or compensation for overtime should therefore be regulated in the employment contract. Executive employees are also subject to considerable limitations regarding employee protection, the German Works Constitution Act (Betriebsverfassungsgesetz) or the right of termination. This means that businesses can more easily part with their executive employees. However, in the event of terminations, difficulties can arise, as it must be clarified whether the employee was in fact to be seen as an executive employee. A high salary alone is insufficient for this purpose.

The situation is clearer in the case of a managing director, who is generally not viewed as an employee. Yet, there are also exceptions here in certain circumstances. Thus, for instance, even the managing director of a German limited liability company (GmbH) enjoys some protection against dismissal. It is particularly important in this regard to carefully examine the relevant provisions in the contract.

In order to prevent disputes further down the line, the drafting of employment contracts ought to be very precise and detailed so that the contract regulates as far as possible for all possible eventualities. Lawyers experienced in the field of labour law can be of assistance when drafting. Of course, this is also the case if legal disputes nevertheless emerge and a judicial or extra-judicial solution is required.

<http://www.grprainer.com/en/Executive-Employment-Law.html>

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Anlage: Bild

