



Dismissal of a long-time employee due to illness - Labour Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: In its decision of January 9, 2013 (File number: 7 Ca 5063/12), the Labour Court (ArbG) of Frankfurt am Main ruled that the dismissal for reasons of a long-time employee because of long periods of absence due to illness may be made subject to strict requirements.

The ArbG of Frankfurt am Main declared the dismissal of an employee for invalid, who had been with the company for 16 years, and who had lost up to 80 days a year due to illness over a period of two and a half years. The periods of absence were said to be insufficient for a long-term prediction about further periods of absence. The employer was said to have failed to integrate the employee into the business again.

In every individual case, it should be examined by experienced lawyers whether a dismissal notice is effective. It depends on various factors whether a dismissal is effective. For example, the rules that apply are different for small companies than for larger companies. The Protection Against Dismissal Act (KSchG) applies only to the latter. The determining factor is the number of employees. Outside the application range of the KSchG, only the violation of community standards or a breach of good faith can make a dismissal invalid.

On the other hand, when the KSchG applies, the employee must have a reason for dismissal to make the dismissal socially justified. In the area of regular dismissal, i.e. dismissal with notice, a dismissal is effective for operational, personal or behavioural reasons. Dismissal must always represent the ultimate means - ultima ratio. It means that there are no more moderate means to overcome the operational grievances. The employer must beforehand exhaust all other possibilities such as transfer to another workplace, assignment of a different range of activities, etc.

In case of an extraordinary dismissal without notice, the KSchG offers no special protection. To make an extraordinary dismissal effective, there must be an important reason indicating that the dismissing party cannot be expected to continue the employment relationship until the end of the notice period. This includes serious breaches of duty within the employment relationship.

A dismissal notice must always be in writing and must be received by the employee.

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Anlage: Bild

