
Ramifications of German Court Decision on an Employer's Code of Ethics

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A recent court decision on Wal-Mart's code of ethics was made by the Local Labor Court of Wuppertal. While the detailed reasons behind the recent decision have not yet been published, we wanted to point out our interpretation of some of the ramifications of the German Court's decision.

There has been much speculation in the German press about the wide-ranging implications of the decision. However, looking behind the headlines, the real focus of the decision appears to be confined to the ability of an employer to implement such a code without first consulting with the Works Council. This process is known as "co-determination" in Germany. Under German law, all general rules governing the behavior of employees in the workplace (*Ordnungsverhalten*) must be agreed upon by the Works Council, whereas an employer is generally free to impose rules on work performance (*Arbeitsverhalten*) unilaterally or, alternatively, to stipulate such rules with the employees in the employment contract. The recent interest in the as-yet unpublished Wal-Mart decision among German journalists probably stems from the fact that the adoption of general rules is void vis-à-vis the employees where no proper co-determination procedure has taken place.

The decision highlights the fact that principles of co-determination are pretty well established in Germany.

We have advised numerous US employers through the required consultative process in Germany and have also eased their path in the United Kingdom and elsewhere in the European Union with respect to similar issues. Often a rewording and a very careful legal translation are required so as not to provoke an unnecessary emotional and negative response from employees. While it is possible for an employer to convince an arbitration board to implement a code over the objection of a Works Council, that is likely to occur only if the code does not contravene the employees' so-called "personality rights." Again, we have advised many US companies as to whether clauses typically found in such codes (such as the prohibition of romantic relationships in the workplace and the introduction of telephone hotlines to report violations of the code) are likely to contravene those rights. Some of this is uncharted territory in Germany and requires a careful examination of the code provisions; a clear strategy to counter negative, and often incorrect, press speculation; and sound tactics aimed at reducing employee concerns and persuading them to "buy into" the code.

For more information on this or other labor and employment matters, please contact either of the authors listed above.