

News of Atypical Work in Germany: Recent developments as to fixed-term contracts, temporary and part-time work

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A. Introduction*

[1] Recently, the German law governing atypical forms of work has been amended in several respects. The *Beschäftigungsförderungsgesetz* 1985 (BeschFG 1985 - Act on the Improvement of Employment Opportunities), (1) regulating part-time work (*Teilzeitarbeit*) and (partially) fixed-term contracts (befristete Arbeitsverhältnisse), has been replaced by the *Gesetz über Teilzeitarbeit und befristete Arbeitsverträge* (TzBfG - Act on Part-Time Work and Fixed-Term Contracts), (2) in force since 1 January 2001, and implementing Directive 97/81/EC on Part-Time Work (3) and Directive 99/70/EC on Fixed-Term Contracts (4). The legislator, however, did not confine himself to implementing EC law but regarded the obligation to implement the Directives as a stimulus to amend the right of part-time work and fixed-term contracts fundamentally. In doing so, he fixed a level of employee protection much higher than required by the Directives. (5) The legal rules for temporary work (*Leiharbeit*) have not yet been fundamentally changed. But the *Job-AQTIV-Gesetz* (Job-AQTIV-Act) (6) has amended it in a way at least partially anticipating the presumably soon to be adopted Directive on Temporary Work. (7) Both acts, the Act on Part-time Work and on Fixed-Term Contracts as well as the Job-AQTIV-Act, aim at a reduction of the numbers of unemployed and the creation of employment opportunities. This article sketches and briefly comments on the new rules for fixed-term work, temporary and part-time work.

B. Fixed-term contracts

[2] Before the coming into force of the TzBfG, there were mainly two provisions regulating fixed-term contracts: sec. 620 of the *Bürgerliches Gesetzbuch* (BGB - Civil Code) (8) and sec. 1 BeschFG. Sec. 620 BGB, stipulating that every employment contract ended after expiry of the agreed period, obviously regarded the conclusion of employment contracts for a definite period as the usual case. However, since a fixed-term contract ends automatically when the fixed period ceases, the conclusion of fixed-term contracts is, from an employer's point of view, a comfortable strategy to avoid the problems and costs incidental to dismissal protection. (9) In order to prevent such a circumvention of the rules on dismissal protection German courts developed, soon after first protective measures of dismissal protection had been enacted in 1920, (10) limitations of the conclusion of fixed-term contracts. (11) According to this well-established case law, in principle still applicable today, a contract for a definite period is lawful only on condition that there is an objective reason justifying the time limit. (12)

[3] In the mid 1980s, in view of increasing unemployment, these restrictions on fixed-term contracts were questioned. After a remarkably heated debate, the BeschFG was passed in 1985. The main target of criticism (13) was sec. 1 BeschFG, explicitly admitting the conclusion of fixed-term contracts for a maximum duration of 18 months without being subject to a justification requirement. However, sec. 1 BeschFG 1985 was only applicable to new employees (14) and trainees immediately after the end of vocational training. (15) Newly established enterprises and employer employing twenty or less employee were even entitled to conclude fixed-term contracts for up to 24 months. (16) The legislator hoped that the possibility to conclude fixed-term contracts would be used frequently, and that previously unemployed persons and apprentices would find fixed-term employment that, once established, would later be converted into permanent employment. (17) The passing of sec. 1 BeschFG had been so controversial that the then parliamentary majority of CDU/CSU (18) and FDP (19) limited its effectiveness to a period of five years; after these five years sec. 1 BeschFG was twice prolonged for another five years, finally until 31 December 2000. (20)

[4] In 1996, the BeschFG was amended. (21) The maximum period for fixed-term contracts lacking an objective reason in sec. 1 para. 1 BeschFG was prolonged to 24 months for all employers; at the same time the legislator explicitly admitted the conclusion of up to three consecutive fixed-term contracts without objective reason, up to a total duration of 24 months. (22) Furthermore, the conclusion of fixed-term contracts with older employees was facilitated. According to the newly introduced sec. 1 para. 2 BeschFG, the time limit of sec. 1 para. 1 BeschFG did not apply to fixed-term contracts with employees who have reached the age of sixty or more. However, any limitation as to time in accordance with sec. 1 para. 1 and para. 2 BeschFG was, according to sec. 1 para. 3 BeschFG, nevertheless invalid if there was a close objective link with a preceding employment contract, be it of limited or of unlimited duration, with the same employer. (23) Furthermore, a new sec. 1 para. 4 BeschFG stated explicitly that the conclusion of fixed-term contracts due to other reasons - meaning due to an objective reason - was not affected by the BeschFG. Last not least a time limit for filing a law suit claiming the invalidity of the limitation as to time was introduced. An employee intending to claim that the limitation as to time of his employment contract was invalid had to file the suit at the labour court, claiming a statement that the employment relationship has not been terminated due to the limitation as to time, within three weeks after the agreed termination of the fixed-term contract. This time limit corresponded to the time limit applicable to claims of unlawful dismissal. (24)

[5] Trade unions and social democrats have always disapproved sec. 1 BeschFG because, while its unemployment reducing effects were uncertain, (25) it invited employers to extend the time of probation (26) to up to 24 months. (27)

It was therefore apparent that, after a new parliamentary majority of SPD (28) and Federation 90/The Green (29) had entered into power in September 1998, the BeschFG would have to be amended in 2000 anyway. In addition, Germany was obliged to implement the Part-time Directive 97/81/EC by 20 February 2000, and Directive 1999/70/EC on fixed-term contracts by 10 July 2001. The bill proposing to replace the BeschFG by the TzBfG, presented on 28 September 2000, (30) evoked protests of trade unions and employers likewise. While the employers strictly opposed the bill because, above all, it proposed a right to reduce the individual working time, (31) trade unions were disappointed because they had expected that sec. 1 BeschFG would simply be abolished. The legislator, however, decided not only to codify the case law of the *Bundesarbeitsgericht* (BAG - Federal Labour Court) in sec. 14 para. 1 TzBfG) but also to retain sec. 1 BeschFG in principle as sec. 14 para. 2 and para. 3 of the new act.

I. Definition of fixed-term contracts

[6] According to the legal definition laid down in sec. 3 para. 1 TzBfG, implementing Clause 3 no. 1 of the Framework Agreement on Fixed-term Contracts, (32) a fixed-term contract is given if either its date of expiry is determined by a specific date (*zeitbefristeter Arbeitsvertrag*) or if its date of expiry follows from the kind, purpose, or nature of the work (*zweckbefristeter Arbeitsvertrag*). (33)

II. Validity of a limitation as to time

[7] In order to prevent abuse arising from the use of successive fixed-term employment contracts Clause 5 of the Framework Agreement on fixed-term contracts obliges the Member States to introduce at least one of the following measures: (a) objective reasons justifying the renewal of such contracts; (b) the maximum total duration of successive fixed-term employment contracts; (c) the number of renewals of such contracts or relationships. These, however, are rather soft measures compared to the situation in Germany. Nevertheless, the German legislator implemented Clause 5 by not only maintaining but even tightening up the legal framework for fixed-term contracts.

[8] There is one formal, but very important requirement for a valid limitation as to time of an employment contract: While employment contracts can generally be concluded either orally or in writing, the limitation as to time of an employment contract is, according to sec. 14 para. 4 TzBfG, valid only if it is laid down in writing. This requirement had formerly been introduced as sec. 623 BGB, in force since 1 May 2000. (34)

[9] As regards the substantial requirements for a valid limitation as to time, the principle rule is laid down in sec. 14 para. 1 TzBfG. Accordingly, the conclusion of a fixed-term contract is valid only if there is a justifying reason. Such a reason is in particular given if para. 1 there is only temporary internal company demand for work, para. 2 the limitation as to time takes place subsequent to training or studies in order to smooth the employee's transfer into further employment, para. 3 the employee is employed in order to replace another employee, para. 4 peculiarities of the work justify the limitation as to time, para. 5 the limitation as to time takes place in order to test the employee, para. 6 there are reasons in the employee justifying the limitation as to time, para. 7 the employee is paid from budgetary funds which are, according to budgetary law, intended for fixed-term employment, and if he or she is employed accordingly, or para. 8 the limitation as to time is based on a settlement in court. Except for sec. 14 para. 1 no. 2 TzBfG these examples (35) mainly correspond to the case law of the Federal Labour Court developed in the context of sec. 620 BGB. (36) Before the coming into effect of the TzBfG, the requirement of a justifying reason, however, was applicable only to employment contracts concluded for a duration of more than six months by an employer employing more than five employees. (37) For only then the Act on Dismissal Protection applies. (38) Nevertheless sec. 14 para. 1 TzBfG applies to any fixed-term employment contract, whether or not they are concluded for more than 6 months or a shorter period, whether or not the employer employs more or less than 5 employees. (39)

[10] There are two exceptions to the rule that a limitation as to time of an employment contract is valid only if there is an objective reason justifying the time limit. The first is laid down in sec. 14 para. 2 TzBfG, perpetuating sec. 1 BeschFG: a contract for a definite period may, without any justifying reason, be concluded for a maximum duration of two years; a contract for a shorter period may be prolonged up to three times up to the same maximum duration. Different from sec. 1 BeschFG, however, the conclusion of a fixed-term contract on the basis of sec. 14 para. 2 TzBfG is invalid if an employment relationship with the same employer, be it of limited or of unlimited duration, has ever existed before. This means that it is completely irrelevant how much time has passed since the first employment relationship. This highly disputed provision is an important amendment to the situation under the BeschFG, severely restricting the lawfulness of fixed-term contracts without a justifying reason. (40) In collective agreements, the number of prolongations or the maximum duration of the fixed-term contract can be determined differently. Employers and employees falling under the scope but nevertheless not bound by such a collective agreement (41) may agree that the provisions of the collective agreement shall be applicable.

[11] The second exception refers to older workers. According to sec. 14 para. 3 TzBfG, the conclusion of a fixed-term contract is neither requiring a justifying reason nor is the fixed-term contract subject to any maximum duration if the employee is fifty-eight years of age or older. A limitation as to time, however, is invalid if there is a close objective link with a preceding employment contract of unlimited duration with the same employer. Such a close objective connection is in particular to be assumed if, at the time when the fixed-term contract is concluded, less than six months have passed since the termination of the employment contract of unlimited duration. Whether this provision is compatible with Directive 99/70/EC on Fixed-Term Contracts is very doubtful. To prevent abuse arising from the use of successive fixed-term employment contracts, Clause 4 of the Framework Agreement on fixed-term contracts

stipulates that at least one of the following restrictions has to apply to fixed-term contracts: either (a) objective reasons justifying the renewal of such contracts or relationships, or (b) the maximum total duration of successive fixed-term employment contracts, or (c) the number of renewals of such contracts. According to sec. 14 para. 3 TzBfG no such restriction, however, is applicable to fixed-term contracts with employees of fifty-eight or older. The employee's age cannot be regarded as a objective reason justifying the limitation as to time. For Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (42) prohibits direct and indirect age discrimination. (43) Even though direct and indirect age discrimination are justifiable, age as such cannot be regarded an objective reason justifying age discrimination. (44)

III. Consequences of an invalid limitation as to time

[12] The consequences of an invalid limitation as to time, as developed by case law, (45) are now laid down in sec. 16 TzBfG. Accordingly, the fixed-term employment contract is regarded as being concluded for an indefinite period of time if the limitation is invalid; the employer can terminate it by way of ordinary dismissal at the agreed time of expiry at the earliest, unless ordinary dismissal (with notice) has been agreed in accordance with sec. 15 para. 3 TzBfG. However, if the limitation is invalid only due to a lack of writing the employment contract can be terminated even before the agreed time of expiry.

[13] If an employee wants to claim that the limitation as to time of his or her employment contract is invalid, he or she has to bring an action before the Labour Court of First Instance within three weeks after the agreed expiry of the employment contract, claiming the court's statement that the employment relationship has not been terminated due to the limitation as to time. This follows from sec. 17 TzBfG. If no such claim is lodged within the 3-weeks-period, the limitation is statutorily deemed to be valid since sec. 5-7 of the *Kündigungsschutzgesetz* (KSchG - Act on Dismissal Protection) apply analogously. If the employment relationship is continued after the agreed date of expiry the three-weeks period starts upon receipt of the employer's written announcement that the employment contract is terminated due to the limitation as to time.

IV. Consequences of a valid limitation as to time

1. Equal treatment

[14] If the limitation as to time of an employment contract is valid, an employee employed on the basis of a fixed-term contract shall, on account of the limitation as to time of his or her employment contract, not be in a less favourable manner than a comparable employee working on the basis of an employment contract of unlimited duration, (46) unless there are objective reasons justifying unequal treatment. An employee working on the basis of a fixed-term contract is entitled to pay and other dividable monetary benefits which are granted for a specific calculation period, at least to an extent corresponding to the share of the duration of his or her employment in the calculation period. If the entitlement to certain working conditions depends on the duration of the employment relationship in the same establishment or enterprise the same periods have to be considered for employees working on the basis of a fixed-term contract as for employees working on the basis of a permanent employment contract, unless there are objective reasons justifying unequal treatment. Before the coming into effect of the TzBfG, the principle of equal treatment of employees with a fixed-term contract and employees with an open-ended contract, as today laid down in sec. 4 para. 2 TzBfG, had not been acknowledged in German labour law. (47) Its introduction was necessary in order to implement Clause 4 of the Framework Agreement on Fixed-Term Contracts.

2. Miscellaneous

[15] If the duration of a fixed-term contract is determined by way of the calendar the employee knows exactly in advance when his or her contract will expire: by the end of the agreed period, sec. 15 para. 1 TzBfG. If the duration of a fixed-term contract follows from the kind, purpose, or nature of the work, however, the date of expiry is not always foreseeable for the employee. Hence, sec. 15 para. 2 TzBfG stipulates that the contract expires on reaching the purpose of the contract, at the earliest two weeks after receipt of the written information of the employee by the employer about the date when the purpose will be attained. (48) A fixed-term contract is, in accordance with sec. 15 para. 4 TzBfG, regarded as being continued for an undetermined period of time if it is, with the employer's knowledge, continued at expiration of the contract, unless the employer immediately objects to the continuation or immediately informs the employee that the purpose of the contract has been attained.

[16] A fixed-term contract can be terminated by means of ordinary dismissal (with notice) only provided that the right to ordinary dismissal has been agreed upon, either individually or in the applicable collective agreement, sec. 15 para. 3 TzBfG. If the employment contract has been concluded for the lifetime of a person or for a period longer than five years the employee is entitled to give notice of termination after five years. The notice period is five months then.

V. Information and Training

[17] In order to ensure that fixed-term employees have the same opportunity to secure permanent positions, sec. 18 para. 1 TzBfG, implementing Clause 6 sec. para. 1 of the Framework Agreement, obliges the employer to inform employees with an fixed-term contract about vacancies in the enterprise or in the plant. The information can be given by way of general announcement in a suitable place in the establishment and the enterprise, accessible to

employees. Furthermore, the employer, according to sec. 19 TzBfG, implementing Clause 6 sec. para. 2 of the Framework Agreement, has to 'see to it' that employees with a fixed-term employment contract can participate in vocational and occupational training aiming at the promotion of occupational development and mobility, unless urgent internal company reasons or wishes of other full-time or part-time employees concerning vocational or occupational training are an obstacle. Sec. 19 TzBfG does not establish a genuine entitlement to vocational or occupational training. If the employer, however, decides to offer such a training to permanent employees, employees working on the basis of a fixed-term contract are to be treated equally. Sec. 19 TzBfG hence concretises the right to equal treatment as laid down in sec. 4 para. 2 TzBfG. (49)

[18] Last not least, the employer has to inform the employee representatives of the number of employees working on the basis of fixed-term contracts and their share in the total number of employees of the establishment and the enterprise. This follows from sec. 20 TzBfG, implementing Clause 7 para. 3 of the Framework Agreement.

C. Commercial temporary work

[19] Commercial temporary work (*gewerbliche Arbeitnehmerüberlassung*, or *unechte Leiharbeit*) is regulated under the 1972 *Arbeitnehmerüberlassungsgesetz* (AÜG - Act on Temporary Employment Business). (50) This act intends to provide a minimum of protection for temporary employees who are posted on a commercial basis. Those provisions of the AÜG regulating the commercial temporary employment relationships cannot in detail be dealt with here. (51) The following explanations hence focus on those rules which either have recently been amended or which will have to be amended if the draft Directive on Temporary Work should be adopted unchanged.

I. Fixed-term temporary contracts

[20] Until 1997, a temporary employment contract had, in principle, to be of unlimited duration. Only if there was a reason justifying the time limit a fixed-term temporary contract was lawful. Since the relaxation of the conditions for the conclusion of fixed-term contracts, brought about by the 1985 BeschFG, was not applicable to temporary employment contracts the conditions for the conclusion of fixed-term temporary employment contracts were even stricter than those for the conclusion of ordinary fixed-term contracts. In 1997, the restrictions on the conclusion of fixed-term temporary employment contracts were enormously relaxed. (52) Since that time, the first employment contract between a temporary work agency and a temporary employee may, in accordance with sec. 9 no. 2 AÜG, always be concluded for a defined period without requiring a justifying reason and without the duration of the defined period being limited. Only for the renewal of a first fixed-term temporary employment contract a justifying reason is, at least in principle, required. This requirement, however, does not apply if the renewed fixed-term temporary employment contract follows immediately upon another fixed-term temporary employment contract with the same temporary work agency. Thus, the conditions under which a temporary employment contract can be limited as to its duration are much lower than the conditions applicable to the limitation as to time of ordinary employment contracts. The legislator assumed that the 1997 amendments would eliminate impediments for the creation of new temporary jobs.

II. Maximum duration for lawful hiring-out

[21] Initially, sec. 3 AÜG limited the maximum duration for lawful posting to a specific user undertaking to three consecutive months. Thus, the legislator wanted to prevent user undertakings from appointing temporary workers to permanent jobs. In 1985, faced with increasing unemployment, this period was extended to six months in order to provide an alternative to overtime, thereby increasing the number of employees employed by temporary employment agencies. (53) In 1994 it was further prolonged to nine months, (54) in 1997 to twelve months. The Job-AQTIV-Act even doubled this period. Since 1 January 2002, temporary employees can be posted to the same user undertaking to up to 24 months. (55) Nevertheless, temporary employment relationships usually last only for very short periods: e.g. in 1999, 12 per cent of the temporary employment contracts lasted for less than a week, 53 per cent lasted between one week and three months. (56)

III. Principle of equal treatment

[22] Very often temporary employees earn less than comparable employees employed by the user undertaking. (57) Until recently, this was lawful since the general principle of equal treatment applies only to employees of the same employer. Between the user undertaking and the temporary employee, however, there is no contractual relationship. (58) Since 1 January 2001, sec. 10 para. 5 AÜG obliges the temporary agency to grant temporary employees the same working conditions, including pay, which are applicable to comparable employees in the establishment of the user undertaking. This principle of equal treatment is, however, applicable only after the twelfth month of posting to the same user undertaking. Although only a small percentage of temporary employees are posted for such a long time, (59) the introduction of the principle of equal treatment was highly disputed. (60) Whether or not the future Directive on working conditions for temporary work (61) will force the legislator to reduce the twelve-month-period further, remains to be seen. Article 5 para. 1 of the draft Directive, containing the principle of equal treatment of temporary and permanent employees, does not provide for a waiting period. According to Art. 5 para. 2 of the draft, Member States may, however, provide that an exemption be made when temporary workers who have a permanent contract of employment with a temporary agency continue to be paid in the time between postings. In theory, this is

exactly the situation under German law. If a waiting period of 12 months, however, means that in fact only a small percentage of employees enjoys the right of equal treatment, Art. 5 would largely be ineffective in Germany. Whether this is compatible with the principle of *effét utile* may well be doubted.

D. Part-time work

[23] Before the coming into effect TzBfG, part-time work had been regulated in the BeschFG, intending to make part-time work more attractive. (62) Besides a statutory definition of part-time work in its sec. 2 para. 2, the BeschFG codified in sec. 2 para. 1 a principle which had originally been developed by the labour courts: the principle of equal treatment of part-time and full-time employees. In order to give incentives for part-time work, the legislator furthermore stipulated in sec. 3 BeschFG that if an employee, no matter whether or not employed part-time, notifies the employer of his or her wish to change the duration or the pattern of the agreed working time the employer is obliged to inform the employee of all corresponding jobs available in the establishment. Moreover, the BeschFG provided in its sec. 4 and 5 a few minimum regulations for two specific patterns of part-time work: for employment contracts obliging the employee to perform his or her work in accordance with the accumulation of work, so-called employment on call (*Abrufarbeit*), and for job-sharing (*Arbeitsplatzteilung*). (63)

I. Definition of Part-Time Work

[24] The statutory definition of part-time work under the new TzBfG is similar to the definition of part-time work under the BeschFG. According to sec. 2 para. 1 sentence 1 TzBfG, any employee whose regular weekly working time is shorter than that of a comparable full-time employee (64) is working part-time. Hence, part-time work can be anything between 36/35 hours, depending on the branch, and 1 hour per week. If a regular weekly working time has not been agreed upon an employee is nevertheless working part-time as long as his or her regular working time during a given period of up to one year is on average shorter than the working time of a comparable full-time employee. (65) The TzBfG is also applicable to marginal part-time workers excluded from the statutory systems of social security. (66) This follows already from the definition in sec. 2 para. 1 TzBfG and is explicitly confirmed in sec. 2 para. 2 TzBfG.

II. Principle of Equal Treatment

[25] While sec. 2 para. 1 BeschFG disallowed the employer to treat a part-time employee because of the part-time work differently from full-time employees, unless there are objective reasons justifying unequal treatment, sec. 4 para. 1 TzBfG, implementing nearly word for word Clause 4 of the Framework Agreement, (67) stipulates that a part-time worker may not, because of the part-time work, be treated in a less favourable manner than a comparable full-time employee, unless there are objective reasons justifying unequal treatment; a part-time employee is moreover explicitly entitled to pay or other dividable monetary benefits at least in an extent corresponding to the share of his or her working time in the working time of a comparable full-time employee. The standards of this test as elaborated by the Federal Labour Court are so strict that reasons justifying differential treatment of full-time and part-time employees are accepted in exceptional cases only. (68)

III. The Right to Reduce and to Extend Unilaterally the Agreed Working Time

[26] One of the most disputed provisions of the TzBfG is sec. 8, granting employees the right to reduce the agreed working time, the so-called right to part-time work. (69) Modelled upon the Dutch example, (70) the right to part-time work was introduced to promote job creation and to contribute to equal employment opportunities for men and women. (71) The introduction of the right to part-time work was not required by Directive 97/81/EC. Clause 5 no. 3 of the Framework Agreement obliges the Member States only 'to give consideration to requests by workers to transfer from full-time to part-time work that becomes available in the establishment'.

1. The right to part-time work

[27] The right to part-time work is laid down in sec. 8 TzBfG, a rather lengthy and complicated provision. It provides that an employee's working time, be it agreed upon individually or regulated in a collective agreement, (72) has to be reduced and distributed in accordance with his or her wishes, provided that certain requirements are fulfilled. In order to avoid that the employees' interests are not met and therefore the employment promoting effect of part-time work is frustrated, (73) no specific degree of reduction is required. As a consequence any level of reduction can be claimed.

[28] The right to part-time work applies if only two conditions are fulfilled. An employee must have been continuously employed for more than 6 months, sec. 8 para. 1 TzBfG (74) by an employer employing more than 15 employees, sec. 8 para. 7 TzBfG. Small employers are released from the organisational and administrative burdens resulting from the right to part-time work. The right to part-time work is applicable to employees of any category, be it full-time, part-time, temporary, or fixed-term employees. Although Clause 2 para. 2 of the Framework Agreement authorises the Member States to exclude casual part-time workers wholly or partly from the national measures implementing the of the Framework Agreement, the TzBfG is even applicable to marginal part-time workers that are excluded from the statutory systems of social security. (75) The right to part-time work also applies to employees in managerial positions. Implementing Clause 5.3 d) of the Framework Agreement, sec. 6 TzBfG unmistakably obliges the employer to facilitate access to part-time work even in managerial positions.

[29] The main procedural requirement of the right to part-time work is the employee's request. According to sec. 8

para. 2 TzBfG the employee has to request the reduction of his or her agreed working time and to specify the volume of the reduction at least three months in advance. (76) Reasons for the employee's request do not have to be given. The 3-months-period shall give the employer sufficient time to provide for organisational arrangements, for instance to hire an additional employee. (77) Voluntary agreements to reduce the working time can, of course, still be concluded at any time. Sec. 8 para. 2 TzBfG furthermore stipulates that the employee shall, together with the request to reduce the working time, inform his or her employer of the requested distribution of the reduced working time, i.e. from when to when the employee would like to work. (78)

[30] Sec. 8 para. 3 TzBfG obliges the employer to discuss the requested reduction of working time with the employee, explicitly with the aim of reaching an agreement. Employee and employer shall furthermore reach an agreement about the distribution of the working time. Sec. 8 para. 3 TzBfG demonstrates the legislator's hope that the parties to the employment contract will usually voluntarily agree to reduce the working time. (79) If such an agreement is reached, the employment contract changes accordingly. (80) If no agreement can be achieved, the working time may nevertheless be reduced, provided that the following further requirements are met.

[31] According to sec. 8 para. 4 TzBfG, the employer has to grant the requested reduction of working time and to determine the distribution of working time in accordance with the employee's wishes, provided that no 'operational reasons' (*'betriebliche Gründe'*) are conflicting. The crucial question is, of course, what kind of reasons can be regarded to be 'operational reasons' within the meaning of sec. 8 para. 4 TzBfG. The answer to that question is one of the most important and therefore most contested aspects of the right to part-time work. Sec. 8 para. 4 explicitly states that operational reasons may in particular be found if the reduction of the working time interferes considerably with the organisation, the course of work or the safety in the establishment, or if the reduction of working time causes disproportionate costs. What that means in detail is highly disputed. (81) Only two points seem to be clear: the additional administrative and organisational burdens resulting from the employment of part-time workers as such cannot be regarded as operational reasons excluding the right to part-time work; otherwise the statutory right would be led *ad absurdum*. (82) Likewise, the employer's objection that he was not able to find a suitable additional employee does not constitute an operational reason, unless he can prove that such an employee is not available at the labour market. (83) Legitimate reasons for rejection can be specified in collective agreements, sec. 8 para. 4 TzBfG. According to sec. 22 para. 1 TzBfG, however, collective agreements are not allowed to deviate from sec. 8 TzBfG to the employees' disadvantage. As a consequence the reasons laid down in collective agreements have to be at least 'operational reasons' within the meaning of sec. 8 para. 4 TzBfG. Employers and employees who fall under the scope of a collective agreement defining operational reasons but who are not bound by it can individually agree that the provisions of the collective agreement on legitimate rejection reasons shall be applied to the respective individual employment relationship, sec. 8 para. 4 TzBfG.

[32] If the employer agrees to the requested reduction of working time and its distribution, the working hours and their distribution change accordingly. If the employer disapproves the request he, according to sec. 8 para. 5 TzBfG, ought to inform the employee about his decision on the reduction of working time and the distribution of the reduced working time at least one month before the reduction of working time should, according to the employee's request, become effective. The employer's decision must be given in writing; but he is not required to give any reasons for his decision. On condition that the employer's decision is submitted in time and observes the correct form, the employee's request to work part-time has been effectively rejected; the working time is not reduced. The employee may later on request again a reduction of working time, but he or she is not allowed to do so before two years have passed, sec. 8 para. 6 TzBfG. If the employee does not want to accept the employer's refusal his or her only option is to seek redress in court. The labour courts then have to decide if there have been operational reasons conflicting with the employee's request to work part-time. If the labour court finds that there are no operational reasons the court decision replaces the employers consent to change the employment contract in accordance with the employee's wishes. As soon as this decision has become non-appealable, the employment contract changes accordingly. (84)

[33] If the working time has been reduced and distributed in accordance with the employee's request, either by agreement between employer and employee or automatically, the employer is, according to sec. 8 para. 5 TzBfG, entitled to change the distribution of working time if the interests of the establishment outweigh the employee's interests in keeping the distribution of working time; the employer is only obliged to announce such a change one month in advance.

2. The right to claim an extension of the working time

[34] Although the public debates focuses on the right to part-time work, the TzBfG also grants part-time employees a right to claim an extension of his or her working time to a larger part-time volume or to the regular working time of full-time employees, whether or not the part-time agreement is based on a voluntary agreement with the employer or has been enforced upon the employer automatically in accordance with sec. 8 para. 5 TzBfG. As the introduction of the right to part-time work, the introduction of the right to claim an extension of the working time was not required by Directive 97/81/EC, obliging employers only 'to give considerations to requests from workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise'. The right to request an extension of working time follows procedural and material rules which are less complex than those applicable to the right to part-time work. If an employee has informed the employer of his or her request to extend the working time the employer has, according to sec. 9 TzBfG, 'to give preference' to it, unless this would conflict with urgent operational

reasons or requests of other part-time employees. Although the wording is vague the duty to 'give preference' has to be interpreted as a duty to grant the request provided that the conditions are met. (85) Contrary to the right to part-time work granted under sec. 8 TzBfG, neither thresholds nor time limits apply to sec. 9 TzBfG. Hence from the very first day of employment every part-time employee in every enterprise is entitled to claim an extension of his or her working time, as long as there are no 'urgent operational reasons' or requests of other employees conflicting.

IV. Rules for specific forms of part-time work

[35] Already the BeschFG provided a few minimum regulations for two specific forms of part-time work. These have been taken over by the TzBfG, only minor amendments being made. (86) According to sec. 12 TzBfG, employer and employee can agree upon that work is to be performed in accordance with the work accumulation. The agreement of such 'employment on call' (*Abrufarbeit*) has to specify the duration of the weekly and daily working time. If a specification of the weekly working time is lacking a weekly working time of ten hours is implied by law. If the daily working time is not specified the employer is obliged to employ the employee for a minimum duration of three hours at a time. The employee is obliged to work only on condition that he or she has been informed at least four days in advance. In a collective agreement these provisions can be altered, even to the employees' disadvantage, as long as the weekly and daily working time are specified and a period of advanced notice provided for, sec. 12 para. 3 TzBfG. Employees and employers falling under the scope of such a collective agreement but not bound by it can, according to sec. 12 para. 3 sentence 2 TzBfG agree to apply the collectively agreed provisions on employment on call.

[36] Part-time work in form of job-sharing is explicitly admitted in sec. 13 para. 1 TzBfG: employer and employee may agree that several employees share the working time at one workplace (*Arbeitsplatzteilung*). If one of the job-sharers is unable to work the other job-sharer(s) are, in accordance with sec. 13 para. 1 sentence 2 TzBfG, only obliged to replace him or her if they have agreed to do so in every individual case or if the employment contract provides for an replacement obligation in cases of urgent operational reasons and if this can reasonably be expected in every individual case. Moreover, sec. 13 para. 2 TzBfG states that the mere termination of the employment contract of one job-sharer never justifies the dismissal of other employee(s) involved in the job-sharing relationship; the employer's rights to pronounce a dismissal to change working conditions (*Änderungskündigung*) (87) on this occasion or to dismiss due to other reasons remains unaffected. This very strict limitation of an replacing obligation of job-sharers is deemed to be the main reason why job-sharing hardly ever occurs in Germany. (88)

[37] According to sec. 13 para. 3 TzBfG, sec. 13 para. 1 and para. 2 apply analogously if groups of employees work alternately on particular work places in determined periods, without being job-sharing within the meaning of sec. 13 para. 1. In a collective agreement sec. 13 para. 1 and para. 3 TzBfG can be altered, even to the employees' disadvantage, as long as the collective agreement contains provisions on the replacement of job-sharers. Employees and employers falling under the scope of such a collective agreement but not bound by it can, according to sec. 13 para. 4 sentence 2 TzBfG agree to apply the collectively agreed provisions on employment on call.

V. Information and Training

[38] The employer is obliged to advertise vacancies also as a part-time jobs provided that a certain job which the employer intends to advertise either in public or within the establishment is suitable for part-time work, sec. 7 para. 1 TzBfG, implementing Clause 5 no. 3 (c) of the Framework Agreement. Furthermore, the employer has to inform employees who have informed him of their wish to change the duration or the distribution of their working time about corresponding vacancies in the enterprise or in the plant, sec 7 para. 2 TzBfG. In addition, the employer has to inform the employee representatives about part-time work in the establishment or the company, in particular about existing or planned part-time jobs and about the transformation of part-time jobs into full-time jobs or *vice versa*. At the request of the employee representatives the necessary documents have to be put at their disposal, sec. 7 para. 3 TzBfG.

[39] The employer is moreover obliged to 'see to it' that part-time employees can participate in vocational training and occupational training aiming at the promotion of occupational development and mobility unless urgent internal company reasons or wishes of other full-time or part-time employees concerning vocational or occupational training are an obstacle, sec. 10 TzBfG, implementing Clause 5 no. 3 (d) of the Framework Agreement.

VI. Ban of Dismissal

[40] Last not least, sec. 11 TzBfG, implementing Clause 5.2 of the Framework Agreement, prohibits the termination of an employment relationship because of an employee's refusal to change from a full-time employment relationship to a part-time relationship or *vice versa*. Such a dismissal is invalid. In accordance with Clause 5.2 of the Framework Agreement, allowing the termination of the employment contract for other reasons such as may arise from the operational requirements of the establishment concerned, sec. 11 TzBfG does explicitly not affect the employer's right to terminate the employment relationship for other reasons.

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(1) BGBl. I, 710.

(2) BGBl. I, 1966.

(3) Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ 1998, L 14/9; cf. Barnard, *EC Employment and Labour Law*, 2 ed. Oxford 2000, 429-432; Nielsen, *European Labour Law*, Copenhagen 2000, 151-153; Jeffery, *Not Really Going to Work? Of the Directive on Part-Time Work, 'Atypical Work' and Attempts to Regulate it*, ILJ 1998, 193; Marlene Schmidt, *Die neue EG-Richtlinie über Teilzeitarbeit*, NZA 1998, 576; Treber, *Sozialer Dialog in der Europäischen Union und Gleichbehandlung bei Teilzeitarbeit*, ZTR 1998, 250; as regards the Framework Agreement cf. Blanpain, *European Labour Law*, 7 ed. Den Hague 2000, 268-270; *Part-time workers equal rights agreement*, EOR 1997, 37; Kreimer-de Fries, *EU-Teilzeitvereinbarung – kein gutes Omen für die Zukunft der europäischen Verhandlungsebenen*, ArbuR 1997, 314.

(4) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term contracts concluded by ETUC, UNICE and CEEP, OJ 1999, L 145/43, corrected OJ 1999, L 244/64; cf. Röthel, *Europäische Rechtsetzung im sozialen Dialog, Zur Richtlinie 1999/70/EG über befristete Arbeitsverhältnisse*, NZA 2000, 65; Marlene Schmidt, *Das Arbeitsrecht der Europäischen Gemeinschaft, Baden-Baden 2001*, paras. 384-398; as to the draft directive cf. Murray, *Normalising Temporary Work, The Proposed Directive on Fixed-Term Work*, ILJ 1999, 269; Wank/Börgmann, *Der Vorschlag für eine Richtlinie des Rates über befristete Arbeitsverträge*, RdA 1999, 383; as to the framework agreement cf. Blanpain, *The European Agreement on Fixed-term Contracts and Belgian Law*, IJCLLIR 1999, 85; Weiss, *The Framework Agreement on Fixed-term Work: A German Point of View*, IJCLLIR 1999, 97; Tiraboschi, *Glancing at the Past: An Agreement for the Markets of the XXIst Century*, IJCLLIR 1999, 105; Lorber, *Regulating Fixed-Term Work in the United Kingdom: A Positive Step towards Workers' Protection?* IJCLLIR 1999, 121.

(5) Both directives only provide minimum standards, cf. Clause 6 no. 1 of the Framework Agreement in Directive 97/81/EC and Clause 8 no. 1 of the Framework Agreement in Directive 99/70/EC, both explicitly allowing Member States and/or social partners to maintain or introduce more favourable provisions than set out in the respective agreement.

(6) The acronym AQTIV stands for *aktivieren* (to activate), *qualifizieren* (to qualify), *trainieren* (to train), *investieren* (to invest) and *vermitteln* (to place s.o.)

(7) Cf. the Commission's proposal of 20 March 2002 for a Directive on the working conditions of temporary workers, COM (2002) 149 final.

(8) Of 18 August 1896, RBGl. p. 195.

(9) As to the rules of dismissal protection in Germany today cf. Manfred Weiss/Marlene Schmidt, *Labour Law and Industrial Relations in Germany*, Kluwer, 3rd ed., The Hague 2000, paras. 218-260.

(10) The *Betriebsrätegesetz* (BRG - Works Councils' Act) of 4 Feb. 1920, RBGl. p. 147, contained first provisions of general dismissal protection.

(11) See, fundamentally *Reichsarbeitsgericht* (RAG - Reich Labour Court), dec. of 19 May 1928, RAGE 1, 361 (363); confirmed in the dec. of 28 Nov. 1930, RAGE 7, 93 (96). These decisions, however, dealt with consecutive fixed-term contracts. Contrary to today, the RAG moreover required the employer's intention to circumvent dismissal protection.

(12) Fundamentally *GS Bundesarbeitsgericht* (BAG – Federal Labour Court), dec. of 12.10.1960, AP no. 16 § 620 BGB Befristeter Arbeitsvertrag; more recently BAG, dec. of 21 Feb. 2001, AP no. 226 § 620 BGB Befristeter Arbeitsvertrag; dec. of 22 March 2000, AP no. 222 § 620 BGB Befristeter Arbeitsvertrag.

(13) See e.g. Kempen, *Arbeitnehmerschutz, Tarifverträge und Beschäftigungsförderungsgesetz*, ArbuR 1985, 374; Mückenberger, *Der verfassungsrechtliche Schutz des Dauerarbeitsverhältnisses*, NZA 1985, 518.

(14) Sec. 1 para. 1 sentence 1 no. 1 BeSchFG. A new employment within the meaning of sec. 1 para. 1 sentence 1 no. 1 BeschFG is, according to sec. 1 para. 1 sentence 2 BeschFG not given, if there is a close objective link to a preceding employment contract, be it of limited or of unlimited duration, with the same employer. Such a close objective connection was, in accordance with sec. 1 para. 1 sentence 3 BeSchFG, in particular to be assumed if less than four months have passed since the preceding employment contract.

- (15) Provided that the former trainee can be employed only temporarily because there is no permanent job available, sec. 1 para. 1 sentence 1 no. 2 BeschFG.
- (16) Sec. 1 para. 2 BeschFG.
- (17) BT-Drs. 10/2102, p. 15.
- (18) Christian Democratic Union and Christian Social Union.
- (19) Free Democratic Party.
- (20) Article 2 of the Act of 26 July 1994, BGBl. I, 1786.
- (21) Article 4 of the Act of 25 September 1996, BGBl. I, 1476.
- (22) Section 1 para. 1 BeschFG as amended.
- (23) As under the BeschFG in its initial version, such a close objective connection was, in accordance with sec. 1 para. 3 sentence 2 BeSchFG, in particular to be assumed if less than four months have passed since the preceding employment contract.
- (24) As a consequence, sec. 5-7 of the Act on Dismissal Protection are analogously applicable; cf. sec. 1 para. 5 sentence 2 BeschFG as amended.
- (25) Whether or not the 1985 Act contributed to a reduction of unemployment is still subject of controversy; cf. Bielenski, Deregulierung des Rechts befristeter Arbeitsverträge, WSI-Mitteilungen 1997, 532.
- (26) If the BeschFG is not applicable, only the first six months of an employment relationship can be used as a time of probation. For the Kündigungsschutzgesetz (KSchG - Act on Dismissal Protection) is, according to its sec. 1, applicable only to dismissals of employees who have been continuously employed for more than six months. Cf. Dütz, Arbeitsrecht, 6 ed., München 2001, para. 127.
- (27) Bielenski, WSI-Mitteilungen 1997, 532 (533 seq.) with further proofs.
- (28) Social Democratic Party.
- (29) Bündnis 90/DIE GRÜNEN.
- (30) BR-Drs. 591/00 = BT-Drs. 14/4373.
- (31) As to this so-called right to part-time work cf. below, paras. 27-33.
- (32) Directive 1999/70/EC only 'implements' an agreement between the European social partners, i.e. the Directive itself mainly puts into effect the framework agreement containing the substantial provisions on fixed-term contracts. This unique and highly debatable practice is provided for in Article 138 seq. of the EC-Treaty as amended in Amsterdam. For a critique cf. Britz/Schmidt, The Institutionalised Participation of Management and Labour in the Legislative Activities of the European Community: A Challenge to the Principle of Democracy under Community Law, ELJ 2000, 45, with further proofs.
- (33) Employment contracts concluded under a dissolving condition (*auflösend bedingter Arbeitsvertrag*) do not fall under this definition. To them, however, sec. 4 para. 2, 5, 14 para. 1 and para. 4, 15 para. 2, para. 3, and para. 5 as well as sec. 16-20 apply, according to sec. 21 TzBfG, analogously.
- (34) Article 2 of the Act of 30 March 2000 Simplifying and Accelerating the Labour Court Procedure, BGBl. I, 333.
- (35) Sec. 14 para. 1 nos. 1-8 TzBfG only gives examples. Hence, the courts are not prevented from developing other categories of justifying reasons. Wank, Münchener Handbuch Arbeitsrecht (MüHdbArbR), Ergänzungsband, Individualarbeitsrecht, 2nd ed., München 2001, § 116 para. 161.
- (36) Däubler, in: Kittner/Däubler/Zwanziger, Kündigungsschutzrecht, Kommentar, 5 ed., Köln 2001, § 14 TzBfG para. 158.

- (37) Wank, *MüHdbArbR*, § 116 paras. 7, 63.
- (38) Cf. 1, 23 para. 1 Act on Dismissal Protection.
- (39) Däubler, in: Kittner/Däubler/Zwanziger, § 14 TzBfG para. 7; Bezani/Müller, *Das Gesetz über Teilzeitarbeit und befristete Arbeitsverträge*, *DStR* 2001, 87 (93); Wank, *MüHdbArbR*, § 116 para. 5.
- (40) Däubler, in: Kittner/Däubler/Zwanziger, § 15 TzBfG para. 146; Wank, *MüHdbArbR*, § 116 paras. 186-191. Cf. Bezani/Müller, *DStR* 2001, 87 (91 seq.).
- (41) Since they are no members of the parties to the collective agreement.
- (42) Council Directive of 27 November 2000, *OJ* 2000, L 303/16.
- (43) See Weiss, *IJCLLIR* 1999, 97 (102); Däubler, in: Kittner/Däubler/Zwanziger, § 14 TzBfG para. 179; disagreeing Wank, *MüHdbArbR*, § 116 paras. 209 seq., who thinks that sec. 14 para. 3 TzBfG was more favourable for older employees; disagreeing also Thüsing/Lambrich, *Umsetzungsdefizite in § 14 TzBfG?* *BB* 2001, 829, who regard the employee's age as a justifying reason.
- (44) Cf. Marlene Schmidt/Daniela Senne, *Das gemeinschaftsrechtliche Verbot der Altersdiskriminierung und seine Bedeutung für das deutsche Arbeitsrecht*, *RdA* 2002, 80 (86);
- (45) Däubler, in: Kittner/Däubler/Zwanziger, § 16 TzBfG para. 1; Wank, *MüHdbArbR*, § 116 para. 275.
- (46) Comparable is, according to sec. 3 para. 2 TzBfG, any employee of the same establishment, working on the basis of an employment contract unlimited as to time, employed in the same or a similar activity. If there is no comparable employee in the establishment, working on the basis of an employment contract unlimited as to time, the comparable employee has to be determined with the help of the applicable collective agreement; in all other cases it has to be taken into account who is usually regarded as a comparable employee working on the basis of an employment contract unlimited as to time in the respective branch of the Economy.
- (47) Däubler, in: Kittner/Däubler/Zwanziger, § 4 TzBfG para. 30; Wank, *MüHdbArbR*, § 116 para. 229.
- (48) Däubler, in: Kittner/Däubler/Zwanziger, § 15 paras. 15 seq.; Wank, *MüHdbArbR*, § 116 para. 257.
- (49) Däubler, in: Kittner/Däubler/Zwanziger, § 19 TzBfG para. 2; Wank, *MüHdbArbR*, § 116 para. 305.
- (50) *BGBI.* I, p. 1393.
- (51) For details, cf. Weiss/Schmidt, *op. cit.*, paras. 110-112.
- (52) *Arbeitsförderungsreformgesetz* (Employment Promotion Reform Act), *BGBI.* I, 594.
- (53) Art. 7 of the *BeschFG*, cf. *supra*.
- (54) Article 2 of the Act of 21 Dec. 1993, *BGBI.* I, 2353.
- (55) Art. 7 of the *Job-AQTIV-Gesetz*, *BGBI.* 2001 I, 3443.
- (56) Federal Government (ed.), 9th Report on the Experiences with the AÜG, 4 Oct. 2000, *BT-Drs.* 14/4220, p. 93, tab. 4.
- (57) *BT-Drs.* 14/4220, p. 15.
- (58) As to the legal framework of temporary work cf. Weiss/Schmidt, *op. cit.*, para. 110.
- (59) Cf. *supra*, fn. 56.
- (60) Cf. Düwell, *Änderungen im Arbeitsrecht durch das Job-AQTIV-Gesetz*, *BB* 2002, 989; Behrend, *Arbeitnehmerüberlassung bis zu 24 Monaten - Job-AQTIV mit Hindernissen*, *NZA* 2002, 372.

(61) COM (2002) 149 final.

(62) BT-Drs. 10/2102, p. 14.

(63) For more detailed information cf. Weiss/Schmidt, *op. cit.*, paras. 104-109.

(64) Comparable is, according to sec. 2 para. 1 sentences 3 and 4 TzBfG, any full-time employee of the same establishment in the same kind of employment relationship employed in the same or a similar activity. If there is no comparable full-time employee in the establishment the comparable full-time employee has to be determined with the help of the applicable collective agreement which usually determines the regular working time of full-time employees. If there is no applicable collective agreement or if the applicable collective agreement does not determine the regular working time it has to be taken into account who is usually regarded as a comparable full-time employee in the respective branch of economy.

(65) Sec. 4 para. 1 sentence 2 TzBfG.

(66) According to sec. 8 para. 1 para. 1 Social Security Code (Sozialgesetzbuch) Part IV, employees working fewer than 15 hours per week and earning not more than 325 € per month are excluded from the statutory systems of health insurance, from the statutory pension scheme including occupational incapacity and total disability insurance, from the statutory unemployment insurance as well as from the statutory long-term care insurance.

(67) Like Directive 1999/70/EC, Directive 97/81/EC only 'implements' an agreement between the European social partners. Cf. *supra*, fn. 32.

(68) For more details cf. Buschmann, in: Buschmann/Dieball/Stevens-Bartol, *Teilzeitarbeit, Kommentar für die Praxis*, 2nd ed., Köln 2001, § 4 TzBfG paras. 1-45; Schüren, *MünchHdbArbR*, § 161 paras. 37-116; Zwanziger, in: Kittner/Däubler/Zwanziger, § 4 TzBfG paras. 1-29.

(69) As to details cf. Buschmann, in: Buschmann/Dieball/Stevens-Bartol, § 8 TzBfG paras. 1-44; Schüren, *MünchHdbArbR*, § 161 paras. 35-93; Zwanziger, in: Kittner/Däubler/Zwanziger, § 8 TzBfG paras. 1-59; Marlene Schmidt, *The Right to Part-Time Work under German Law: Progress in or a Boomerang for Equal Employment Opportunities?* ILJ 2001, 335-351.

(70) As regards the right to part-time work under Dutch law cf. Waas, *Gesetzlicher Anspruch auf Teilzeitarbeit in den Niederlanden*, NZA 2000, 583; for a comparison cf. Jacobs/Schmidt, *The Right to Part-Time Work: The Netherlands and Germany Compared*, IJCLLIR 2001, 371.

(71) BT-Drs. 14/4374, 16 seq.

(72) Cf. Schiefer, *Entwurf eines Gesetzes über Teilzeitarbeit und befristete Arbeitsverhältnisse*, DB 2000, 2119; Preis/Gotthardt, *Das Teilzeit- und Befristungsgesetz*, DB 2001, 147.

(73) BT-Drs. 14/4374, 30.

(74) This requirement relates to the applicability of the Act on Dismissal Protection; cf. *supra*, fn. 26.

(75) Cf. *supra*, note. 66.

(76) What happens if the 3-months-period is not observed is not regulated in sec. 8 TzBfG. However, in accordance with general rules the request has to be interpreted as claiming the right to part-time work for the earliest possible point in time. Däubler, *Das neue Teilzeit- und Befristungsgesetz*, ZIP 2001, 217 (221); Preis/Gotthardt, DB 2001, 145.

(77) BT-Drs. 14/4374, 31.

(78) Such a specification, however, is not obligatory. If the employee does not indicate when he or she would like to work the distribution of the reduced working time is simply up to managerial discretion. Cf. Preis/Gotthardt, DB 2001, 146.

(79) BT-Drs. 14/4374, 31; cf. also Preis/Gotthardt, *Neuregelung der Teilzeitarbeit und befristeten Arbeitsverhältnisse*, DB 2000, 2068.

(80) Däubler, ZIP 2001, 221.

(81) Cf. Schmidt, ILJ 2001, 335 (343 seq.).

(82) Beckschulze, Die Durchsetzbarkeit des Teilzeitanpruchs in der betrieblichen Praxis, DB 2000, 2598 (2602); Däubler, ZIP 2001, 217 (220); Lindemann/Simon, Neue Regelungen zur Teilzeitarbeit im Gesetz über Teilzeitarbeit und befristete Arbeitsverhältnisse, BB 2001, 146 (149).

(83) BT-Drs. 14/4374, 31.

(84) As regards the procedural problems in court connected with the right to part-time work cf. Schmidt, ILJ 2001, 335 (346 seq.), with further proofs.

(85) W. Hromadka, Das neue Teilzeit- und Befristungsgesetz, NJW 2001, 403; Kliemt, Der neue Teilzeitanpruch, NZA 2001, 68.

(86) Bezani/Müller, DStR 2001, 87.

(87) I.e. a regular dismissal, combined with an offer to continue the employment re-lationship under amended conditions. For details cf. Weiss/Schmidt, op. cit., paras. 256-260.

(88) Heinze, Flexible Arbeitszeitmodelle, NZA 1997, 681 (686).