



# Outsourcing

## labor law related effects of Outsourcing

by Jan Dehlsen & Phillip Kern

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# Outsourcing introduction

- → outside resource using
- → labour law related this means big risks for the employers:
  - employer-employee relationship
  - tariff validity
  - labor management relation
  - right of codetermination

# Outsourcing introduction

- To regulate these risks, there are different regulations
- Meanings for the enterprise:
  - careful planning and execution of the outsourcing task in work-legal regard

# Important laws

- § 613a BGB (German Civil Code)
- Tarifvertragsgesetz (law for collective labour agreement)
- Betriebsverfassungsgesetz (law for works constitution)
- Mitbestimmungsgesetz (law for workers' participation)
- Umwandlungsgesetz (law for change of corporate form)
- Arbeitnehmerüberlassungsgesetz (law for extern temporary workers )

## § 613a BGB (German Civil Code)

In case of „Betriebsübergang“:

- new owner (= new employer) has to take over the existing work contracts including all conditions
- validity of collective rights and labour agreements (e.g. wage agreements, “Tarifvertrag”)
- old and new owner are liable for existing outstandings/debts
- no employment contracts may be cancelled because of “Betriebsübergang”
- employers will be informed before the change and can contradict

# Tarifvertragsgesetz

## (law for collective labour agreement)

- does not directly provide rules that can be connected to Outsourcing
- has to be considered if working conditions controlled by collective labour agreements will be changed by Outsourcing processes.  
(→ 2<sup>nd</sup> rule of § 613a BGB (German Civil Code))

# Betriebsverfassungsgesetz (law for works constitution)

- workers' council has to be informed in sufficient time about changes in company structure
- workers' participation issues may be influenced
  - liability of company to social plan (> 20 employees)
  - participation in companies economy committee (> 100 employees)
  - participation in personnel decisions
  - exemption from work for members of workers' council (> 200 employees)
  - existence of a workers' council

# Mitbestimmungsgesetz (law for workers' participation)

- Workers' participation in the board of directors can be omitted due to Outsourcing processes



# Umwandlungsgesetz (law for workers' participation)

labour related protection rights :

- claims of the workers' council for information according to
- liability of dismissal protection
- assignment of employees in balance of interests
- liability of §613a BGB
- saving the workers' participation in companies
- saving the rights of workers' council

... and more

# Arbeitnehmerüberlassungsgesetz (law for extern temporary workers )

- lending employees to an other company
  - Federal Employment Office and the workers' council of the company has rights to decide about work permission and work duration.
- Consultants in companies
  - do not have regulations about work duration
  - no influence to their work by any intitution

# 3 ways of Outsourcing

From the labour law related point of view it is possible to divide Outsourcing into 3 types.

- external processing
- transfer of resources
- operator model

# external processing

- Assignment of former intern tasks/processes to other companies without transfer of resources like equipment or personnel.
- e.g. use the service of a cleaning company instead of employing cleaning personnel

# labour law related handling of external processing

- normally this is not a „Betriebsübergang“
  - no effects to employees according to §613a BGB
  - but possible cancelling of jobs if there are no other tasks
- there are some exceptions where external processing is not a sufficient reason for cancelling jobs
  - e.g. outsourcing to „Organgesellschaften“

# operator model

- A whole branch/production line/service area will be organized and managed by an extern company but owner stays the same.
- e.g. to lease a production line

# labour law related handling of operator models

- are not regulated clearly by laws
- can be regarded as “Betriebsübergang” according to §613a BGB
  - if the manager (not the owner) is responsible for all decisions
  - if it is a temporary solution for planned transfer of resources

# resources transmission

- A whole branch/production line/service area will be handed over to an other company including all resources.
- normally done by sale



# labour law related handling of ressources transmission

- -after § 613 a BGB the Outsourcing supplier will be the new employer of all the outsourced branch/ production line/ service area concerned employees
- -that does not apply for those employees, which contradict ( § 613a Abs. 6 ) against the transition of their employer-employee relationship
- -that means their employer-employee relationship remains by the old employer → the employer can quit then operating conditionally

# Conclusion

- Outsourcing in most cases will cause labour law effects
  - in case of job dismissals they way has to be well planned
  - conditions ruled by labour law have to be considered
  - workers' council has always to be involved