

Svenja Doll

**Leiharbeit in der Betriebsverfassung. Die
rechtliche Verortung von
Leiharbeitnehmern**

Studienarbeit

Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern

Karl Michael Scheriau



Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern:

Leiharbeit in der Betriebsverfassung. Die rechtliche Verortung von Leiharbeitnehmern Svenja Doll, 2015-07-22
Studienarbeit aus dem Jahr 2014 im Fachbereich Jura Zivilrecht Arbeitsrecht Note 1,7 Ernst Moritz Arndt Universität Greifswald Veranstaltung Betriebsverfassungsrecht Sprache Deutsch Abstract In den vergangenen Jahren veränderte sich die betriebsverfassungsrechtliche Position des Leiharbeitnehmers grundlegend. Ausgehend vom Bundesarbeitsgericht wurde eine Distanz zu Beschäftigten deutlich, welche den Leiharbeitnehmer in der Betriebsverfassung bisher mit dem allgemeinen betriebsverfassungsrechtlichen Arbeitnehmerbegriff gleichsetzten. Es ist gegenwärtig der Fall, dass die Rechtsprechung im Betriebsverfassungsgesetz weitestgehend reformiert wurde. Man ist also auf der Suche nach einer eindeutigeren abgrenzenden Definition für den Leiharbeitnehmer in der dessen gesonderte Stellung besser hervorgehoben werden kann. Gleichzeitig soll der allgemeine Arbeitnehmerbegriff wie bisher erhalten bleiben. In der allgemeinen Auffassung der Rechtsprechung driften die Ansichten zum Thema Leiharbeitnehmerschaft zunehmend auseinander. Nicht zuletzt der kontrovers gesehene Fall Amazon gab Anregung zur Diskussion um die Stellung von Leiharbeitnehmern in der Belegschaft eines Betriebes. Wie also lässt sich der Leiharbeitnehmer konkret betriebsverfassungsrechtlich zuordnen? Was sind die Grundsätze der Betriebszugehörigkeit? Und welche Leistungen gibt es in der Rechtsprechung? Die Darlegung verschiedener Ansichten zu diesen Rechtsfragen soll den Kernpunkt dieser Arbeit darstellen. Zu Beginn ist es erst einmal wichtig sich anzuschauen, wie der betriebsverfassungsrechtliche Arbeitnehmerbegriff eigentlich definiert ist, um anschließend eine Abgrenzung zum Leiharbeitnehmer herausarbeiten zu können. Bevor man dann in die eigentliche Problematik der Zuordnung einsteigt, nachdem die Position des Leiharbeitnehmers im Wesentlichen erörtert wurde, sollen hier darauf eingegangen werden, welche Rechte ihm denn sowohl im Verleihbetrieb als auch im Entleihbetrieb zustehen. Dies insoweit, wie es zur Verdeutlichung der sich wandelnden Betrachtung des Leiharbeitnehmers einschlägig ist. Hierbei ist besonders bei Mitbestimmungs- und Mitwirkungsrechten die Vielzahl von Schwellenwerten im Betriebsverfassungsgesetz zu berücksichtigen. Inwiefern dort durch gesetzliche Formulierungen die Leiharbeitnehmer miteinbezogen beziehungsweise herausgelassen werden, wird ebenfalls zum Gegenstand dieser Arbeit.

Der gemeinsame Betrieb im Kontext drittbezogenen Personaleinsatzes Daniel Polzin, 2023-04-12 Wer arbeitet für wen? Lange Zeit drehte sich die Debatte um die Schutzbedürftigkeit von Beschäftigten, die im Betrieb eines vertragsfremden Arbeitgebers eingesetzt werden. Im Wesentlichen um den rechtlichen Status von Leiharbeitnehmern sowie die Abgrenzung von Arbeitnehmerüberlassung und Werk bzw. Dienstvertragskonstellationen. Die Debatte um gemeinsame Betriebe gem. § 1 II BetrVG wiederum wurde von der Frage dominiert, wie die Führung eines Betriebes durch mehrere Unternehmen betriebsverfassungsrechtlich einzuordnen ist und welche besonderen Voraussetzungen hieran geknüpft werden müssen. Diese Divergenz in den Diskussionen um die verschiedenen Rechtsfiguren hat sich mit der jüngeren Entwicklung als nicht mehr haltbar erwiesen. Auch der gemeinsame

Betrieb wird als Gestaltungsinstrument zur Einsparung von Personalkosten mittels Einsatz vertragsfremder Arbeitnehmer zu eigenen Zwecken propagiert und genutzt Welche Folgen hat das f r die Rechte der Besch ftigten Wie kann sichergestellt werden dass dies nicht zu ihren Lasten geht Diesen Fragen geht die vorliegende Arbeit nach indem die Grundlagen betrieblicher Unternehmenskooperationen und betrieblicher Gleichbehandlung analysiert werden auf den gemeinsamen Betrieb fokussiert und dabei doch den Blick nicht darauf verengt Gleichbehandlung von Leiharbeitnehmern Stefanie Römer,2009 Diplomarbeit aus dem Jahr 2009 im Fachbereich Jura Zivilrecht Arbeitsrecht Note 1 3 Leuphana Universit t L neburg Sprache Deutsch Abstract Die Arbeitnehmer berlassung bernimmt als Fr hindikator eine wichtige Funktion f r den gesamten Arbeitsmarkt In Phasen des konjunkturellen Aufschwungs eilt die Zahl der Leiharbeitnehmer dem allgemeinen Besch ftigungsaufbau zeitlich voraus In Zeiten der Unsicherheit ber das anhaltende Wachstum nutzen Unternehmen verst rkt Leiharbeit als flexibles Instrument der Personalplanung W hrend eines Abschwungs bietet die Arbeitnehmer berlassung Unternehmen die M glichkeit zeitnah auf Ver nderungen reagieren zu k nnen Sowohl in der aktuellen Finanz und Wirtschaftskrise als auch in Abschwungsphasen der Vergangenheit geht ein Abbau der Zahl der Leiharbeitnehmer dem konjunkturellen Einbruch des Arbeitsmarktes voraus Da Leiharbeitnehmer als Teil dieses Fr hindikators zuerst von den negativen Auswirkungen einer Rezession betroffen sind sind sie vergleichbar hohen Risiken und Unsicherheiten ausgesetzt Leiharbeit gilt als prek re Form atypischer Besch ftigung da die betroffenen Arbeitnehmer oft schlechtere Arbeitsbedingungen vorfinden als Besch ftige in einem Normalarbeitsverh ltnis Leiharbeitnehmer sind beispielsweise h heren sozialen Belastungen ausgesetzt da bei kurzen Einsatzzeiten keine Integration im Entleihbetrieb stattfinden kann Die Diskussion ber die Arbeitsbedingungen der Leiharbeitnehmer ist durch die Begriffe equal pay und equal treatment gepr gt Durch die Schaffung gleicher Arbeitsbedingungen einschlie lich des Arbeitsentgeltes soll eine Benachteiligung von Leiharbeitnehmern im Vergleich zu den Stammarbeitnehmern im jeweiligen Entleihbetrieb vermieden werden Dieses Ziel wollen das Europ ische Parlament und der Rat mit ihrer am 21 11 2008 verabschiedeten Richtlinie 2008 104 EG ber Leiharbeit verwirklichen Ein Blick auf die fast 30 j hrige Entstehungsgeschichte dieser Richtlinie zeigt dass die jeweil

Leiharbeit und Werkvertrag Karl Michael Scheriau,2012-12-19 **Leiharbeit und Werkvertrag** Karl Michael Scheriau,2017-04-05 **Begrenzungen des Einsatzes von Leiharbeitnehmern** Martina Berenbrinker,2017 Leiharbeit war in Deutschland traditionell als flexibles Instrument zur Abfederung von Produktionsspitzen und Personalausfall angelegt Seit einigen Jahren wird sie aber teilweise auch genutzt um Personalkosten zu sparen Diese Einsparungen gingen oft direkt zu Lasten der Leiharbeitnehmer und trugen dazu bei das schlechte Image der Leiharbeit in Deutschland weiter zu pflegen Zur Verbesserung des Leiharbeitnehmerschutzes wurden in der Fachliteratur seit langem Begrenzungen f r den Einsatz von Leiharbeitnehmern gefordert Gesetzliche Ankn pfungspunkte f r diese Begrenzungen waren 1 Abs 1 S 2 A G in der Fassung bis April 2017 und die Richtlinie 2008 104 EG Aus beiden folgte man ein Verbot dauerhafter Arbeitnehmer berlassungen

Voraussetzungen und Konsequenzen eines Verbotes blieben jedoch ungeklärt. Diese Argumentation nahm die Autorin zum Anlass die Richtlinie 2008/104/EG und das ArbZG in der Fassung bis April 2017 auf ein Verbot dauerhafter Arbeitnehmerberlassung hin zu untersuchen. Die im April 2017 in Kraft getretene berlassungshchstgrenze untersucht die Autorin auf Verfassungs- und Unionsrechtskonformität hin. Im Anschluss setzt sie sich mit der vom Gesetzgeber gewählten zeitlichen Begrenzung kritisch auseinander und zeigt rechtliche Alternativen für die Verbesserung des Leiharbeitnehmerschutzes auf.

Rechtliche Rahmenbedingungen für Leiharbeit im Gesundheitswesen Miriam Schubert, 2015-05-13 Studienarbeit aus dem Jahr 2014 im Fachbereich Gesundheit Gesundheitswesen Note 2,0 Alice Salomon Hochschule Berlin Sprache Deutsch Abstract In der vorliegenden Arbeit wird der Fokus auf die Leiharbeit in der Pflege und die rechtlichen Rahmenbedingungen gelegt. Es sollen die Fragen beleuchtet werden, wie verbreitet die Leiharbeit in der Pflege ist und welche Auswirkungen dies im Arbeitsablauf und auf die Qualität der Pflege sowie im Zusammenwirken von Pflegekräften und Pflegebedürftigen hat. Leiharbeit rückte im Verlauf des 21. Jahrhunderts immer mehr in den gesellschaftlichen und politischen Fokus. Die Argumente strikter Gegner und eifriger Befürworter prallten in den letzten Jahren immer wieder aufeinander. Gewerkschaften beklagen, dass weniger Zeitarbeitsplätze geschaffen werden, dies aber auf Kosten der regulären Arbeitsplätze geschieht. Konträr halten dagegen, dass durch die Zeitarbeitsstellen schneller entstehen und vergeben werden und damit Mehrarbeit nicht durch Überstunden oder Preissteigerungen ausgeglichen wird. Gerade in den letzten Jahren stieg die Zahl der Leiharbeitnehmer exorbitant an. Vor allem seit der Weltwirtschaftskrise der Jahre 2008 und 2009 nahm die Zahl der in Leih- bzw. Zeitarbeitsfirmen Beschäftigten enorm zu. Laut der Bundesagentur für Arbeit waren im Jahr 2011 927.000 Menschen als Leiharbeitnehmer beschäftigt. Bei der letzten Erhebung im Juni 2013 immerhin noch 825.000 Leute. vgl. Arbeitsmarktberichterstattung Februar 2014: Der Arbeitsmarkt in Deutschland. Zeitarbeit. Aktuelle Entwicklungen. Insgesamt sind ca. 2% aller Erwerbstätigen in der Bundesrepublik Deutschland als Zeitarbeitnehmer beschäftigt. Neben den typischen Branchen wie der Industrie wird die Arbeitnehmerberlassung im Gesundheitswesen zunehmend bedeutungsvoller und bringt einzelne Besonderheiten mit sich. Eingesetzt wird die Leiharbeit weitgehend nicht zur Kompensation von Auftragsspitzen, sondern eher als Mittel zur Aufrechterhaltung der Versorgung bei zu geringer Personalausstattung. Brütigam et al. 2010a, S. 3. Der demographische Wandel und die Zunahme von fehlenden Fachkräften in der Pflege sind zentrale Probleme des Gesundheitswesens. Der Einsatz von Leiharbeitnehmern ist auf die Dauer gesehen keine Lösung dieser Probleme. Viel mehr bildet dieses Instrument eine Art Scheinlösung. vgl. ebd. S. 31f. Festangestellte Mitarbeiter eines Unternehmens sind zunehmend mit Zeitarbeitnehmern konfrontiert und es stellt sich die Frage, ob die Qualität der Pflege darunter leidet, da sich routinisierte Arbeitsabläufe nicht einstellen. vgl. Arbeitnehmerkammer Bremen 2011, S. 4f. Die betriebsverfassungsrechtliche Stellung von Leiharbeitnehmern Melanie Dreher, 2009 *Aufgespaltene Arbeitgeberstellung und Betriebsverfassungsrecht* Wolfgang Müllner, 2015 *Leiharbeit, Zeitarbeit*, 2002

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Table of Contents Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern

1. Understanding the eBook Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - The Rise of Digital Reading Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Advantages of eBooks Over Traditional Books
2. Identifying Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - User-Friendly Interface
4. Exploring eBook Recommendations from Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Personalized Recommendations
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern User Reviews and Ratings
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern and Bestseller Lists
5. Accessing Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern Free and Paid eBooks
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern Public Domain eBooks
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern eBook Subscription Services
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern Budget-Friendly Options

6. Navigating Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern eBook Formats
 - ePub, PDF, MOBI, and More
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern Compatibility with Devices
 - Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Highlighting and Note-Taking Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Interactive Elements Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
8. Staying Engaged with Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
9. Balancing eBooks and Physical Books Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Setting Reading Goals Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Fact-Checking eBook Content of Leiharbeit Betriebsverfassung Rechtliche Verortung Leiharbeitnehmern
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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