

# Beiträge zum Arbeitsrecht

Edited by Martina Benecke, Felix Hartmann, Sudabeh Kamanabrou, and Hartmut Oetker

With the series *Beiträge zum Arbeitsrecht (BarbR)*, Mohr Siebeck continues its tradition of publishing high quality academic works, this time in the field of labour law. The series offers a forum for monographs, habilitations, outstanding dissertations and thematically closed volumes dealing with central and fundamental questions of individual and collective labour law. Contributions related to European, international humanitarian and international law are equally as welcome as works dealing with the constitutional bonding and embedding of labour law in general civil law.

Contact:

Dr. Julia Caroline Scherpe-Blessing, LL.M. (Cantab)

Program Director Private Law, Criminal Law, and Procedural Law

ISSN: 2509-9973 - Suggested citation: BARbR

Last updated: 28/11/2022. Prices are subject to change.

---

Order now:

[https://www.mohrsiebeck.com/en/monograph-series/beitraege-zum-arbeitsrecht-barbr?no\\_cache=1](https://www.mohrsiebeck.com/en/monograph-series/beitraege-zum-arbeitsrecht-barbr?no_cache=1)

[order@mohrsiebeck.com](mailto:order@mohrsiebeck.com)

Phone: +49 (0)7071-923-0

Fax: +49 (0)7071-51104

Posth, Maura Larissa

## Haftungsprivilegierung des Betriebsrats

### Anwendbarkeit der Grundsätze über die beschränkte Arbeitnehmerhaftung auf den Betriebsrat und seine Mitglieder

Volume 17  
2022. XIX, 176 pages.

ISBN 9783161619588  
cloth 94,00 €

ISBN 9783161619595  
eBook PDF 94,00 €

The author examines the legal justification for the principles of limited liability of employees and questions if this is also possible and necessary for members of the works council in order to prevent them being put at a disadvantage where liability is concerned.

Survey of contents

#### Einleitung

##### A. Außenrechtsgeschäfte des Betriebsrats

- I. Überblick über die Außenrechtsgeschäfte des Betriebsrats mit externen Beratern
- II. Die Kostentragungspflicht des Arbeitgebers nach § 40 Abs. 1 BetrVG
- III. Außenrechtsfähigkeit des Betriebsrats für Betriebsratsverträge innerhalb des gesetzlichen Wirkungskreises
- IV. Ergebnis

##### B. Außenhaftung der Betriebsratsmitglieder für Betriebsratsverträge außerhalb des gesetzlichen Wirkungskreises des Betriebsrats

- I. Haftungsgrundlage
- II. Vorschläge für Haftungsbegrenzungsmöglichkeiten in der Praxis
- III. Möglichkeiten einer gesetzlichen Haftungsprivilegierung zugunsten des handelnden Betriebsratsmitglieds
- IV. Ergebnis

##### C. Haftungsprivilegierung des Betriebsrats nach den Grundsätzen der beschränkten Arbeitnehmerhaftung

- I. Maßstäbe für eine Übertragung der Grundsätze der beschränkten Arbeitnehmerhaftung
- II. Erweiterung der Rechtsfortbildung der privilegierten Arbeitnehmerhaftung auf Betriebsratsmitglieder
- III. Auswirkung der Haftungsprivilegierung nach den Grundsätzen der beschränkten Arbeitnehmerhaftung auf die Außenhaftung für Betriebsratsverträge bei Überschreiten der Erforderlichkeitsgrenze
- IV. Ergebnis

Zusammenfassung der wesentlichen Ergebnisse und Thesen

Wünschelbaum, Markus

## Kollektivautonomer Datenschutz

### Kollektivvereinbarungen nach Art. 88 DSGVO und ihre Gestaltungskontrolle

Volume 16  
2022. XXII, 242 pages.

ISBN 9783161612848  
cloth 89,00 €

ISBN 9783161612855  
eBook PDF 89,00 €

Can collective bargaining agreements deviate from the GDPR, and if so, how? This work gives new impetus to the discussion about the limits of the opening clause and the principal level of protection. Examining the discretionary scope of collective bargaining parties, which allows for a limited degree of judicial scrutiny, Markus Wünschelbaum develops the »Concept Review« (»Gestaltungskontrolle«) as a roadmap.

Senk, Clara

## Betriebsbegriffe

### Eine Analyse zum deutschen und europäischen Massenentlassungs- und Betriebsübergangsrecht

Volume 15  
2022. XXIII, 428 pages.

ISBN 9783161613173  
cloth 109,00 €

ISBN 9783161613180  
eBook PDF 109,00 €

In view of current legal issues, Clara Senk studies the development of the concept of the business establishment in German and European labour law. She examines approaches to solutions to these issues in various legal systems since the Weimar Republic and shows the extent to which these approaches are still relevant in today's multilevel governance within the European Union.



Hütter-Brungs, Gisela

## Tarifautonomie und unternehmerische Freiheit

### Privatautonome Legitimation als Grund und Grenze tarifvertraglicher Regelungen

Volume 14  
2020. XXIII, 425 pages.

ISBN 9783161593727  
cloth 99,00 €

ISBN 9783161593734  
eBook PDF 99,00 €

The regulation of collective agreements is increasingly encroaching on fundamental entrepreneurial decisions. By taking with the return of tariff autonomy to its private autonomous roots, Gisela Hütter-Brungs develops a harmonious concept to resolve the conflicts between tariff autonomy legislation and entrepreneurial freedom.

Denke, Sebastian

## Tarifvertrag und Betriebsübergang

Volume 13  
2020. XII, 211 pages.

ISBN 9783161595820  
cloth 79,00 €

ISBN 9783161595837  
eBook PDF 79,00 €

What effect do collective bargaining agreements have on a business that has changed hands? Sebastian Denke counters the models that have so far explained this controversial issue with an approach consistently orientated towards the structures of legitimation principles under private law. On this basis, the manifold problems that arise in connection with the second sentence of the first section of the German Civil Code's § 613a regulation can be solved.

Stepien, Viktor

## Berufsfreiheit des Leiharbeitnehmers

### Über die Vereinbarkeit der Unwirksamkeits- und Fiktionsanordnungen des Arbeitnehmerüberlassungsgesetzes mit höherrangigem Recht

Volume 12  
2020. XXVI, 348 pages.

ISBN 9783161592713  
cloth 99,00 €

ISBN 9783161592720  
eBook PDF 99,00 €

Since the reform of the German Act on Temporary Employment (Arbeitnehmerüberlassungsgesetz, AÜG) in 2017, sections nine and ten have primarily been understood as a tool for sanctions against lenders and hirers to enforce regulatory requirements. This leads to the question of whether the encroachment on the freedom of occupation of the temporary worker caused by the provisions is still justified under constitutional law.

Stassek, Julian

## Die Einstellung behinderter Menschen

### Zwischen Beschäftigungspflicht und angemessenen Vorkehrungen

Volume 11  
2020. XIX, 310 pages.

ISBN 9783161593857  
cloth 89,00 €

ISBN 9783161593864  
eBook PDF 89,00 €

The law on employing disabled people in Germany is flanked on one side by a recruitment quota and on the other by the individual suitability of the work place. Is it possible for these two diverse concepts to form a seamless whole?

Geismann, Anne

## Gleichgeschlechtliche Ehe und kirchliches Arbeitsverhältnis

Volume 10  
2020. XXV, 417 pages.

ISBN 9783161593369  
cloth 99,00 €

ISBN 9783161593376  
eBook PDF 99,00 €

Same-sex marriages are prohibited among those who serve the Catholic Church in Germany. This affects the privacy of church employees and goes way beyond what other employers are permitted. Anne Geismann's study comprehensively questions whether the ban is legal from constitutional, European, and simple legal law perspectives.

Böttcher, Mathis

## Der Null-Stunden-Vertrag

### Arbeitszeitflexibilisierung nach deutschem und britischem Recht

Volume 9  
2020. XVI, 196 pages.

ISBN 9783161589980  
cloth 79,00 €

ISBN 9783161589997  
eBook PDF 79,00 €

While German and British employment laws have both had to deal with the legal consequences brought about by an increase in flexible working times and the subsequent advent of zero-hours contracts, the two systems handle things very differently. Where British law barely keeps a check on these contracts with their undefined number of working hours, German legislation ensures that both employee and employer are afforded appropriate protection.

Brauneisen, Kai Thomas

## Die tarifvertragsbedingte Friedenspflicht

Volume 8  
2019. XVI, 238 pages.

ISBN 9783161569142  
cloth 84,00 €

ISBN 9783161569159  
eBook PDF 84,00 €

'War' and 'peace' are martial terms used to describe the battles between employers and workforces over pay and conditions. But are the rules of the game the same as in civil law? Or is there a separate set for industrial action and bargaining agreements? Kai Thomas Brauneisen takes full stock of this fundamental collective labor law issue.

Wenning, Joachim

## Betriebliche Übung und Betriebsvereinbarung

Volume 7  
2019. XXI, 481 pages.

ISBN 9783161575846  
cloth 104,00 €

ISBN 9783161575853  
eBook PDF 104,00 €

Is it possible to prevent or terminate customary practices through works agreements between employers and works councils? How do such agreements affect the establishment and maintenance of customs and practices in the workplace? Joachim Wenning takes a detailed look at all the preconditions and limitations involved.

Bialluch, Christoph

## Das Tarifeinheitsgesetz

### Auslegung und Vereinbarkeit mit höherrangigem Recht

Volume 6  
2019. XIII, 398 pages.

ISBN 9783161567988  
cloth 104,00 €

ISBN 9783161567995  
eBook PDF 104,00 €

From the viewpoint of constitutional and international law, collective bargaining law is a highly controversial piece of legislation. Although declared incompatible with Germany's Basic Law by the country's Federal Constitutional Court, it may nevertheless still be applied. Christoph Bialluch examines how it is to be dealt with in the conflict-laden territory of collective bargaining and industrial disputes.

Möller, Tobias

## Zeitdynamische Bezugnahmeklauseln

### Die Verweisung auf einen Tarifvertrag beim Betriebsübergang im Lichte des europäischen Rechts

Volume 5  
2018. XXIV, 259 pages.

ISBN 9783161560446  
cloth 84,00 €

ISBN 9783161560453  
eBook PDF 84,00 €

How does a transfer of undertakings affect the »dynamic« clause when future collective agreements are incorporated in individual contracts of employment? In his analysis of the European legal basis, Tobias Möller points out that the Transfers of Undertakings Directive requires the dynamic to be maintained and that this does not violate the fundamental rights of the transferee.

Freyler, Carmen

## Arbeitszeit- und Urlaubsrecht im Mobile Office

### Eine Untersuchung der Flexibilität des Arbeitsrechts hinsichtlich technischer Entwicklungen

Volume 4  
2018. XXVIII, 328 pages.

ISBN 9783161558658  
cloth 89,00 €

Work anytime, anywhere – electronic gadgets, digitalization and networking have changed the way we work and our working environments, which raises the question whether current employment law is flexible enough to cope with these new demands. Carmen Freyler examines the situation by looking at how the use of mobile devices affects hours of work and entitlement to leave.

Kreis, Simona

## Whistleblowing als Beitrag zur Rechtsdurchsetzung

### Das öffentliche Informationsinteresse im Arbeitsrecht

Volume 3  
2017. XV, 254 pages.

ISBN 9783161547768  
cloth 84,00 €

Guardian of the law or rule breaker? Whistle-blowers polarise. Where some see brave heroes who pillory injustice, others suspect disloyal informers. The telling of in-company tales often leads to a dismissal – but the fact is that whistle-blowers make a unique contribution to law enforcement. Simona Kreis asks to what extent public information interest can and must be secured in cases involving the workplace.

Sommer, Torsten

## Risiken des Arbeitskampfes und Versicherungsschutz

### Grundlagen einer Streikversicherung moderner Prägung

Volume 2  
2017. XXV, 523 pages.

ISBN 9783161551574  
cloth 99,00 €

The purpose and validity of insurances taken to protect against the risks of industrial actions seem to be self-explanatory: their main aim is to shield businesses affected by disputes from the economic aftermath of such actions and offer appropriate compensation. Torsten Sommer takes a timely and in-depth look at this little observed field, developing a solution to fit modern needs.

Reinecke, Thimo

## Die Sicherung der Tarifgeltung beim Betriebsübergang

### Rechtslage, Interessen und Gestaltung

Volume 1  
2016. XV, 266 pages.

ISBN 9783161549922  
cloth 84,00 €

Collective bargaining agreements are often subject to negotiation during takeovers and employee protection may be compromised as a result. Thimo Reinecke investigates which agreements could be made between vendor and acquirer in order to secure continuation of existing contracts.