



Dr. Johannes Fiala

PhD, MBA, MM

Rechtsanwaltskanzlei

[Fasolt-Straße 7, 80639 München](#) [Rückrufservice 089 / 17 90 900](#) info@fiala.de
[Videoberatung](#)



- [Rechtsgebiete](#)
 - [Bankrecht](#)
 - [Betriebliche Altersvorsorge](#)
 - [Erbschaft und Vorsorge](#)
 - [Finance & Risk Control](#)
 - [Insolvenzrecht](#)
 - [Kapitalanlagerecht](#)
 - [Steuerrecht](#)
 - [Private Altersvorsorge](#)
 - [Vermögensverwaltung](#)
 - [Versicherungsrecht](#)
 - [Vertragsrecht & Vertragsgestaltung](#)
 - [Vertriebsrecht](#)
- [Kanzlei](#)
 - [Qualitätsmanagement](#)
 - [Mediation](#)
 - [Gutachter](#)
 - [Litigation-PR](#)
 - [Presse & Öffentlichkeitsarbeit](#)
 - [Erfahrungsberichte](#)
 - [Heute aktuell](#)
- [Themengebiete](#)
- [Öffentlichkeitsarbeit](#)
 - [Presse / TV / Rundfunk](#)
 - [Veröffentlichungen](#)
 - [Bücher / Fachaufsätze](#)
 - [Publikationen & Medienauftritte](#)
- [Blog](#)
- [Kontakt](#)

[Rechtsgebiete](#) ■

- [Bankrecht](#)
- [Betriebliche Altersvorsorge](#)
- [Erbschaft und Vorsorge](#)

- [Finance & Risk Control](#)
- [Insolvenzrecht](#)
- [Kapitalanlagerecht](#)
- [Steuerrecht](#)
- [Private Altersvorsorge](#)
- [Vermögensverwaltung](#)
- [Versicherungsrecht](#)
- [Vertragsrecht & Vertragsgestaltung](#)
- [Vertriebsrecht](#)

[Kanzlei](#) ▣

- [Qualitätsmanagement](#)
- [Mediation](#)
- [Gutachter](#)
- [Litigation-PR](#)
- [Presse & Öffentlichkeitsarbeit](#)
- [Erfahrungsberichte](#)
- [Heute aktuell](#)

[Themengebiete](#)

[Öffentlichkeitsarbeit](#) ▣

- [Presse / TV / Rundfunk](#)
- [Veröffentlichungen](#)
- [Bücher / Fachaufsätze](#)
- [Publikationen & Medienauftritte](#)

[Blog](#) [Videoberatung](#) [Kontakt](#)

How employees can forestall a threatened termination for an indefinite period of time

Veröffentlicht am 21.08.2015

The Federal Labour Court (BAG ruling dated 06.05.201, ref. [9 AZR 678/12](#)) has ruled that employees may not have their statutory paid holiday entitlement reduced due to unpaid special leave on account of a so-called care period. This means that paid leave entitlement is also available on top of the (unpaid) care time.

Full holiday pay despite care leave as special leave

In justification, the BAG points out that the legal entitlement to vacation pay is mandatory by law and thus cannot be stipulated or shortened in an employment contract. A reduction is only possible if this is provided for by law, such as in the case of military service or parental leave. However, the Nursing Care Leave Act (PflegeZG) does not provide for any possibility of reduction, even if the employment relationship is suspended during the nursing care leave due to this special leave.

Protection against dismissal for employees from the announcement of a care period

If an employee has to fear dismissal, perhaps for operational reasons, due to the dissolution of his department or other circumstances, he can pre-empt the dismissal by announcing a period of care – perhaps only intended

for the following year.

“The Special Protection against Dismissal already begins with the announcement ... of the nursing leave according to [§ 3 PflegeZG](#). An explicit limitation of this period is not regulated.” (von Pappenheim, Lexikon Arbeitsrecht 2014, p. 312)

This means that employees who fear a possible dismissal for whatever reason, e.g. because staff cuts are announced, can, for example, announce a care period of up to 6 months a year in advance and in this way prevent any dismissal measures for 18 months. This can also be achieved with the announcement of a one-month care period, and the period can possibly be longer. The six months of the care period can be shortened – e.g. because the person to be cared for does not accept the care, goes to the nursing home or refuses the intended removal from the home, is aggressive, or the caregiver is overtaxed. And if this occurs before the start of the care period, then the care period ends before it begins, if applicable.

This means that it is possible to control it somewhat when the period of time during which the company is at risk of being laid off has come to an end – for example, because the economic situation has improved or because enough other employees have already been laid off.

Delay in termination can save the job

It is known from practice that in the run-up to a dismissal on the part of the employer, negotiations are often also held on severance agreements due to personnel savings. With a bit of luck, such negotiations about the amount of severance pay and compensation for disadvantages lasted until at some point in the course of this discussion one's own superior had been saved, with which the negotiations simply ended without consequence. Of course, those employees are at an advantage whose employment contract contains some difficulties with regard to the possibilities of termination, which must be taken into account when concluding the contract.

Excerpt PflegeZG

- **1 Aim of the law**

The aim of the law is to give employees the opportunity to care for close relatives in need of care in their own home.

environment and thus improve the compatibility of work and family care.

...

- **3 Care period**

(1) Employees shall be released from work in whole or in part if they have a

care for a close relative in need of care in a domestic environment (care leave). The claim pursuant to sentence 1

does not apply to employers with 15 or fewer employees as a rule.

...

(3) Anyone wishing to claim care leave must notify the employer no later than ten working days before the start of the care leave.

in writing and at the same time declare the period and extent of the exemption.

is to be taken from work performance. ...

- **4 Duration of the care period**

(1) The period of care pursuant to § 3 shall not exceed six months for each close relative in need of care.
(maximum duration). ...

(2) If the close relative is no longer in need of care or if the home care of the close relative is impossible or unreasonable, the care period ends four weeks after the change in circumstances occurs. ...

- **5 Protection against dismissal**

(1) The employer may not terminate the employment relationship from the time of the notice until the termination of the short-term

The employee shall not be entitled to terminate the employment relationship if he/she is prevented from working in accordance with § 2 or if he/she is on care leave in accordance with § 3.

...

- **7 Definitions**

...

(3) Close relatives within the meaning of this Act are

1. Grandparents, parents, in-laws,
2. Spouses, civil partners, partners in a consensual union, siblings,
3. children, adopted or foster children, the children, adopted or foster children of the spouse, or

Life partner, children-in-law and grandchildren.

by Dr. Johannes Fiala and Dipl.-Math. Peter A. Schramm

by courtesy of

WINTHERBURG Media Agency

published in DWZ (www.DrogerieWarenZeitung.de, issue January 2015, page 45)

Sie haben Fragen?

Scheuen Sie sich nicht, uns für ein Kennenlerngespräch anzurufen. Gerne nehme ich mir persönlich Zeit, um Ihren Fall zu prüfen und den ungefähren Aufwand für Ihr Anliegen abzuschätzen.

Danach sind Sie schon einen Schritt weiter!

Sie erreichen uns per Telefon unter der Nummer **089 / 17 90 900** oder mit einem Klick auf den Button:

[Anruf starten](#)



Dr. Johannes Fiala

Ihr Anwalt aus München ist zuverlässig und kompetent immer an Ihrer Seite.

Weiterempfehlung

Sie haben gefunden, wonach Sie gesucht haben? Sie kennen jemanden der unserer Unterstützung benötigt?
Empfehlen Sie uns gerne weiter.



Dr. Johannes Fiala
PhD, MBA, MM

Rechtsanwaltskanzlei



Themengebiete

- [Altersvorsorge und Vermögensplanung](#)
- [Lebensversicherung kündigen](#)
- [bAV Geschäftsführer und Gesellschafter-Geschäftsführer](#)
- [Zinsbetrug mit System](#)
- [Anwalt für Erbrecht und Vorsorge](#)
- [Betriebliche Altersvorsorge kündigen](#)
- [Rechtsanwalt für Versicherungsrecht in München](#)
- [Anwalt Asset Protection in München](#)

Rechtliches

- [Kontakt](#)
- [Juristische Zweitmeinung](#)
- [Impressum](#)
- [Datenschutz](#)

Sprache ändern

 [Deutsch](#)  [English](#)

Kontakt

Rechtsanwaltskanzlei München
Dr. Johannes Fiala, PhD, MBA, MM
Fasolt-Straße 7, 80639 München

Cookie-Einstellungen

[Privatsphäre Einstellungen](#) [Einwilligungsverlauf](#) [Zustimmung aufheben](#)
[Fasolt-Straße 7, 80639 München](#) [Rückrufservice](#) [089 / 17 90 900](#) [info@fiala.de](#) [Videoberatung](#)

Dr. Johannes Fiala, PhD, MBA, MM – 2026 – Alle Rechte vorbehalten



[Video](#) [Anrufen](#) [Mail](#) [Kontakt](#)
[Cookie Consent with Real Cookie Banner](#)