

Employment & Benefits - Switzerland

Federal Supreme Court strengthens unfair dismissal protection for older workers

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On November 12 2014 the Federal Supreme Court reconfirmed a position taken for the first time in 2006 that older employers nearing pension age should enjoy increased protection under employment law against unfair dismissal.

Facts

A 59-year-old manager had worked for the same employer for 35 years. The employer had undertaken numerous actions to mitigate a variety of conflicts which had developed since 2007, particularly due to the manager's poor performance. In order to improve the general work climate:

- the manager's work schedule and job profile were substantially reduced while maintaining the same compensation level;
- numerous team meetings were held with a coach and mediator; and
- the employee was provided with a home office.

The employer considered these efforts to be sufficient under its mandatory duties of due care and loyalty towards the manager. As a result, the employer felt entitled to terminate the employment contract in February 2011 without a previous warning of the intended termination and a further scheduled hearing.

Decision

The Uri District Court and the Uri Supreme Court, as well as the Federal Supreme Court, held that the termination without having rendered a final preceding warning of the intended termination constituted unfair dismissal. The courts granted the manager punitive damages of two months' salary.

Comment

According to government statistics, unemployment rates in the over-55 age bracket are particularly high. It cannot be excluded that employment courts might further relax the standards in defining unfair dismissal for older workers, in particular by granting protection to employees who have worked for the same employer for more than 10 years.

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