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## Article

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Florian Schramm, Michael Schlese \*

## **The Role of Dismissal Protection in Personnel Management. From the Point of View of Personnel Managers \*\***

This article concerns itself with the effects of dismissal protection on personnel management behaviour within companies. The basis of the empirical analysis is 41 expert interviews conducted in 2006 as well as information available from a standardised survey of 750 personnel managers which was carried out in 2007. As a whole the effects of dismissal protection on personnel management are perceived by personnel managers to be insignificant. In general, employment law is considered to be a necessary framework which is, for the most part, non-obstructive yet at the same time non-supportive. Negative judgements relating to dismissal protection referred to its possible prohibitive effects (in the context of new-hirings), company-internal effects (in the context of confrontations within the company) and preventive effects (in the context of the dismissal of personnel). The prohibitive effect in the form of the non-hiring of new employees or the turning to other forms of employment rather than full time is rather weak. The decision to avoid hiring new employees is dependent upon the personnel manager's perception of employment law and not so much on an economical framework or the characteristics of the organisation. The role of dismissal protection within the company is also quite limited. In particular, having been employed by the company for a long time is considered very important for business management reasons. The judgements of those responsible for personnel are not to be explained with clear situational variables such as the business situation of the company or the development of the company's number of employees. There seems to be, rather, quite a lot of leeway regarding the understanding of Employment law and that this is dependent on the personnel managers' competence in this area as well as other factors. These findings are also relevant in light of the announced harmonisation with the European Labour Court (Green Paper labour law)

Key words: **Dismissal Protection, Perception, Personnel Manager**

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## **1. The discussion of dismissal protection and employment law**

This article concerns itself with the effects of dismissal protection on personnel management behaviour within companies. Germany's relatively high level of dismissal protection – compared internationally – is often named as a reason for the high unemployment rate. Possible effects are created particularly with regard to a prohibitive effect of dismissal protection: Is the hiring of new employees postponed or cancelled as a result of employment law? Do companies resort to other forms of employment to avoid the effects of dismissal protection? Which effects does the economic framework have on behaviour? In addition, we have addressed the effects of dismissal protection within the company: What role does dismissal protection play in the employment relationship? This article does not undertake an analysis of the preventive effect – in the sense of the postponing of employee termination or decision to not terminate an employee altogether. Because dismissal protection makes up an important part of employment law, the perceived functionality of employment law is subsequently discussed.

Germany's labour law is considered comparatively rigid in international comparison and a special importance is attached to dismissal protection. Among other things, severance pay and notice periods play a role in this. With the help of an international comparative indicator system, a higher-than-average rigidity is shown in Germany (cp. Pierre / Scarpetta 2004: 10ff).

The article is based upon two empirical investigations: The first being 41 expert interviews conducted with personnel managers in 2006 and, secondly, a standardised questionnaire of 750 personnel managers asking about the usage of employment law in their organization. The aim of the survey was to find out how various laws are actually applied within organisations and which attitudes personnel managers have regarding employment law and its sub-categories.

The role that employment law plays within the economy is a controversial matter of debate in the media. A close connection between the commercial dynamic and the legal system is thereby created. Rights, jurisdiction, and possible legal reality are discussed in the specialized press and the legal system with a relative disregard for socio-scientific and economical knowledge. These aspects alone are not enough for an assessment of the role of employment law in personnel management.

The roll of employment law in personnel management is discussed within expert circles with divergent points of view (cp. e.g. Weber/Kabst 2006, regarding theoretical self-determination in human resources teaching). In this context one should mention 'personnel economics' which is oriented towards the new institutional economics. The economical analysis of employment law as practiced in new institutional economics combines strictly legal rules and personnel policy behaviour on a theoretical level (cp. e.g. Richter/Furubotn 1999). As a result of the abstract level of the analyses, the organisations are often classified quasi as rational individuals set on maximizing their benefits and, for which, changes in employment law basically represent changes in the summary of data which is to be interpreted and used in company decision making policy.

While the law is an explicit analytical component in the new institutional economy, it is rather an implicit component in the case of behaviour-oriented approaches (cp. Martin 2003: 202): ‘objective’ occurrences correspond with subjective perceptions etc., which in turn are then crucial to the understanding of the behaviour of those involved. The employment relationship is seen as a psychological contract with reciprocal expectations and commitments (cp. Rousseau 1995). With respect to the concept of human nature, there is a difference between the complex – sometimes incompatible – models of man and the concept of Homo Economicus although similarities certainly do exist: The parties involved and their behaviour are relevant to economical events. They weigh alternatives with respect to their goals and search for advantageous solutions. In this behaviour-oriented article, various concepts such as Festinger’s theory of cognitive dissonance (1962) are taken into account in order to appropriately describe and explain types of behaviour.

Of course, these two positions don’t cover the entire spectrum. Socio-theoretical approaches (cp. Matiaske 2004) or the system-theoretical perspectives (cp. Mayrhofer 2004) represent additional variations which are of relevance to Employment law and personnel policy. From a system-theoretical point of view, for example, the legal and economic systems would be regarded as the systems of function which are primarily self-referential, meaning that they are based on the foundation of self-description or the description of other areas of life. These systems of function ‘observe’ each other in the logic and manner of their respectively separate operations. As a result the link between law and economy would be loose rather than close.

Three basic statements may be filtered out of the legal discussion regarding dismissal protection.

1. *Level of dismissal protection and the employment market:* It is claimed that employment law is, in general, too rigid. The leading cause of malfunctions is the substantially exaggerated dismissal protection. Its rigidity not only drives up labour costs but also hinders adaptation and structure changes (cp. Möschel 2006: 113).
2. *Dismissal protection and overregulation:* In this context it is stated that the negative situation on the labour market is directly related to high regulations density. Dismissal protection law is a paramount starting point in the modernization of labour law with the aim of simplifying and speeding the processes therein. (e.g. Löwisch 2005a, 2005b: I., Bauer 2005: 1046 et seqq, – contra e.g. Huber 2005: 1340 ff).
3. *Dismissal protection and court interpretation:* In addition, not only the rules themselves emanate insecurity (cp. Bauer 2005) but, moreover, court decisions have changed the legal blanket clauses – the ‘social justification’ according to §1 KSchG – by means of interpretations to be a burden for the employer. This is especially supported by the fact that the dismissal, according to the decision, may only be considered as an ‘ultima ratio’. Additionally, a ‘prognosis’ about future development is required.

This view has been decidedly taken by prominent scientific sides for many years with a significant effect and opinion influencing effect for the political environment. (cp. e.g. Rüthers 2006: 1640 ff, Sachverständigenrat 2003/04: Rn. 677 ff., 681 et seqq.).

Hardly any area in German labour law has been better researched than dismissal protection law. The 'Max-Planck-Study' from 1981 was seminal (cp. Falke/Höland/Zimmermann 1981). This study was updated and supplemented by the research project „Regulierung des Arbeitsmarkts “REGAM“ (Regulation of the Labour Market) (cp. Bielinski et al. 2003; Bothfeld/Ullmann 2004, Pfarr et al. 2005; Bielinski/Ullmann 2005). An additional research project „Kündigungspraxis und Kündigungsschutz im Arbeitsverhältnis“ “KÜPRAX“ (Dismissal Practice and Dismissal Protection in Labour Relationships) contributed to this topic (cp. Höland/Kahl/Ullmann/Zeibig 2004; Höland/Kahl/Zeibig 2005a, 2007). These empirically based studies suggested, in turn, rather conservative conclusions regarding the above listed statements. Bauer et al. (2004), for example, stressed as well, that no effects on the threshold values for the engagement or dismissal of employees in the second half of the 1990s were to be noticed in employment statistics as a result of German dismissal law. Also in places where there was no dismissal protection, there was no increase in employment dynamics. Hypothetically they assume that dismissal protection possibly influences the structure of the employment in that, for example, more or less people were employed part time or in so called negligible jobs or that it became a burden for and affected weaker groups such as women or long-term unemployed 'sorting behaviour'. Sadowski (2004) und Kessing (2004) also argued in this direction: Positive and negative effects of dismissal protection would balance each other and effectively keep the scales balanced although there would possibly be an effect on the make up of the composition between employed and unemployed.

The key message: there is no statistically-based, clear link between a high level of dismissal protection and high levels of unemployment and that this has also been confirmed by international studies (OECD 1999: 50; regarding the difficulties of the methodology: Jahn 2002: 89 et. sqq.). At the same time it is suspected that there may be a connection between a high level of dismissal protection and high unemployment in certain groups, especially the younger. This is, however, not assessed as an empirically firm result. (cp. OECD 1999: 51, but also OECD 2005: 260; Pfarr/Zeibig, 2006; re: legal and empirical cross comparisons of individual Countries: Zachert 2004, 2004a). Schramm and Zachert (2005) delivered the first complete, qualitative findings about the effects of labour law regulations.

Empirical research hardly justifies hopes or expectations that a 'turning of the dismissal-protection adjustment screw' would have any significant effect on the labour market (cp. Neubäumer 2005: 25, 32 et seqq.). The emphasis of the criticism lies more upon the complexity of current dismissal law. It is mainly based upon the morals, feelings and fears of the employers. It is claimed that these (largely) defy the empirical research (cp. Mohr 2006: 547, 556). Others refer to results of more corresponding studies such as 'REGAM' in which the owners of smaller enterprises find dismissal protection to be a burden and in which the majority thereof say that they would be more willing to engage new employees if it did not exist (cp. Moshe 2006: 113; Rüthers 2006: 1640 et. sqq.).

The application of "feelings and fears" in face of the "complexity of labour laws" in the controversy surrounding dismissal laws indicates that one must differentiate between written, practiced and perceived labour law (cp.. Kania, 2004: I; Kania 2005:

596 et. seqq; Stein 2006: 110 et. seqq). We know from legal-sociological research that legal efficiency (laws) is dependent upon many factors. The determinants of perceived norms, perception of legitimacy and the expectation of positive or negative sanctions are accepted as the basic model of behavioural norms or codes of conduct (Röhl 1987: 252 et. sqq.; Rottleuthner 1987: 57; Raiser 1999: 258 et. seqq.). Therefore, the published opinion in the media and in expert circles is not to be underestimated (cp. Castendyk 1994; Hensche 2006). How those responsible for personnel management take advantage of the existing legal latitude in practice is dependent upon, among other things, their knowledge, perceptions and assessments.

## **2. Model and methodology**

### ***2.1 Model and questioning***

Our model of the reception of labour law by commercial organizations is linked to the outlined perspectives. We differentiate three levels – the organisation level and that of the parties involved will be described more closely at a later point. (for more detail see Bradtke et al. 2005: 592 et. sqq.). This approach follows Coleman's argumentation scheme (1995) with which the "macro-variables" are explained on the macro levels with inclusion of the micro-levels.

- Law and economics form social subsystems (Systems of Function) which are represented by the economic and legal discourse. This includes the mass media which plays an important part in forming public opinion and the transport of legal positions to those involved within the company (employees and those responsible for personnel management)
- Organisations as corporate actors and social systems *sui generis* operate within the economic and legal frameworks and, in doing so, guide their behaviour according to the rules of both systems of function. Which concrete goals and tasks does personnel policy – which is affected by labour law – follow? First of all, a differentiation between a long term personnel strategy and more operative activities must be made. Law can have a direct effect on operational activities, for example when the legal guidelines for the organisation of working time are changed. It is however, questionable if, and how, indirect effects upon long term strategies may be proven (cp. Klimecki/Gmür 1998: 481; Peuntner 2002: 305).
- Nienhüser (2004 P. 229) includes the following as the primary tasks and goals pursued by personnel management: Most important is the reduction of production costs which is affected by legal calculations, e. g. the introduction of a legal minimum wage. Secondly, the transaction expenses within the personnel work are to be reduced. These are also influenced by labour law. Thirdly, the transformation of fundamental undertakings into actual job performance is to be accomplished. Here, labour law has a concrete influence as a result of the existence of regulations regarding the termination of employment such as dismissal protection. Fourthly, personnel policy is always involved in the formulation, realization, assertion, negotiation of interests and the sounding of temporary coalitions. At the centre of attention, then, are power structures (cp. Nienhüser 1998; 2003) whose basis is directly and indirectly influenced by law in that the termination of



employees under certain conditions is legally forbidden or when the arrangement of the employment structure is directed in specific ways by the so called “Teilzeit- und Befristungsgesetz oder Arbeitnehmerüberlassungsgesetz” – two German laws which regulate “part time and limited-term contract employment and temp worker employment.

### *Parties involved*

Personnel management, too, is the result and the aggregation of individual actions. To understand the concrete results and reasons for personnel policy it is of value to envision the goals and tasks of the individual parties involved. Those within the organizations take the context of the organization and the system into account and their perceptions, experiences, values and attitudes are guided by them. The goals of the personnel managers may – simply for legitimizing reasons – correspond largely with the above mentioned personnel policies. However, there does exist a certain amount of flexibility (cp. Klimecki/Gmür 1998: 484). This presents the question as to the reasons for the respective embodiment of existing or affected leeway. As those involved can only implement a part of their stance into their behaviour, their organizational integration is of interest.

Subjective constructs such as knowledge, perception, attitudes or labour law related experiences are relevant to the understanding of the perspectives of personnel managers. The different constructs can correspond with each other. They can, however, exist very much independently from one another for example, when opinions are expressed which seem to contradict real past experiences. These stances can be in and of themselves contradictory or reflect the actual contradictory nature of the subject matter. Also, the knowledge of a subject must not be sated by one's own experience. This is especially true when different expert circles hypothesize a subject and it finds its way into ‘published opinion’.

The constructs outlined above are components of more comprehensive models of cognitive social psychology. It is of particular use to refer to the theory of cognitive dissonance which can explain the phenomena of “sub-classing” and “anecdotic evidence” (cp. Kunda 2000; for their relevance to personnel work compare Schramm et al. 2007). In addition, the reactance model and the concept of the “psychological contract” – within the framework of motivational theory – prove to be of great help. The latter stands for subjective perception of mutual expectation and commitment in an employment relationship.

1. *Regarding cognitive dissonance:* The theory of cognitive dissonance (cp. Festinger 1962) fundamentally says that human beings aspire to achieve and maintain a balance in the cognitive system. The cognitive system should be coherent, consistent and temporally stabile. Cognition is understood to be the mental processes of an individual such as thoughts, attitudes, intentions etc. Cognitions are in a state of alternating influence with emotions as well as with the behaviour of the individual. Accordingly, information which is consistent with existing schemas has no problem flowing into the cognitive system while contradictory, dissonant information disturbs the balance. The phenomenon of anecdotic evidence is to be placed in this context. Examples of occurrences which confirm one's own beliefs

are considered typical and are generalized. The value of information which goes against one's own opinions is, however, underrated. These occurrences must not be experienced first hand but rather may be presented by the media or reported by colleagues.

2. *Reactance*: The reactance theory according to Brehm (1966, 1972) illustrates another phenomenon which can be of importance to the understanding of the perception of labour law by personnel managers. According to this theory, a person resists limitations of their perceived freedoms and attempts to defend (or regain) the threatened or already reduced freedoms. Other than in dissonance theory, Reactance appears in situations of extreme pressure e.g. involuntary limitations on behavioural freedom. Dissonance appears, however, in situations of voluntary behaviour. Reactance makes itself more noticeable when more freedoms are threatened, the more important the affected person is, and the higher the level of perceived or anticipated loss of autonomy is.
3. *The psychological contract*: The items of the psychological contract (PC) are the rules by which employee and employer govern their employment relationship. In contrast to a written, legal employment contract the PC relates to the individual perception of the exchange relationship between employer and employee (cp. Rousseau 1995; Isaksson et al. 2003; Gössig 2005). Employment contracts are, by nature, "nondescript" as it is not possible, or desirable, to determine each and every aspect of an employee's function. This means that the "legal, written" contract is formally in power, however, the PC is in fact more realistic as the felt reciprocal expectations are expressed. The psychological "contractual relationship" is likewise made of rational aspects and personal interests and is determined by norms, values and world views. However, there is always reciprocity to consider. Only in the case of suitable reciprocity on the part of the other party, are such beliefs perceived as binding. It is to be taken into consideration that the actual effect on behaviour is dependent upon the perception and interpretation of both one's own service and the service received in return. What counts is that which the employee considers to be an appropriate service and not the expectation which is described in the written employment contract. As a result the contract which most determines behaviour is the basis of the PC and not that of the legal, written contract (cp. Martin/Bartscher-Finzer, 2003).

In light of this background we are interested in dismissal protection from the point of view of the personnel managers. Concretely: what are the perceptions regarding labour law in general and dismissal protection in regard to its prohibitive effect and its effects within a company? Can one link the assessments or the reported behaviour of the company to prevalent, established situational characteristics of the organisation such as business situation and the size of the company? Is it possible to prove the social psychological phenomena cognitive dissonance and reactance?

The criticism of dismissal protection in Germany can be exemplified with three supposed effects:

1. *The "prohibitive effect"*: By "large" prohibitive effect of dismissal protection we mean that the engagement of new employees is either postponed or that new employ-



ees are not hired at all (abstinence). In this way, dismissal protection impedes the creation of new jobs as a result of fears concerning difficulties later if the jobs should need to be cut. The “small” prohibitive effect of dismissal protection means that different forms of the employment relationship – such as fixed-term jobs or temp employment – are chosen so that dismissal protection does not present a problem – at least in the short term.

2. *Effects within the company:* Dismissal protection can have an effect on the behaviour within a company. An absence of dismissal protection (for example in the probationary period or limited-term contracts) can be used to apply pressure. A more comprehensive protection can create job security which motivates the affected to integrate themselves into the company. It can, however, lead to a shift of organisational power to the employee which is factually limiting for the employers freedoms (cp. Neuberger 1995 regarding the roles of power within organisations).
3. *Preventive effect:* Finally, dismissal protection can lead to the fact that dismissals are postponed or not carried out at all. A positive interpretation of this is that the forced slowness in adjustment leads to a higher productivity because the company must deal with the personnel strategically. A negative interpretation is that a reduction of jobs necessary for economic reasons could be impeded.

In the following, we consider the prohibitive effects of dismissal protection and its effects within a company. The analysis of the personnel managers’ perceived functionality of labour law follows as dismissal protection is a part of labour law as a whole.

## 2.2 Methodology

The empirical basis of the analysis is based on expert interviews consisting of guided, questions (compare Bogner/Littig/Menz 2002) and a standardised telephone interview.

The interviews with experts were conducted in 2006 with the aims of 1) identifying the perception of labour law in the everyday workings of a company as well as the dominating attitudes thereof and 2) identifying the companies’ procedural practices. The disproportional -in terms of company size – stratified sample follows the principle of random sampling. Branch firms and public corporations were not included in the population. The interviews lasted between 1.5 and 3 hours and resulted in more than 3000 pages of computer-supported content analysis. This qualitative method provides insights into the dynamic of the internal processes of the companies investigated which would quite probably remain hidden in a more standardised process. Our analysis of the expert interviews was conducted primarily following Mayring’s qualitative content analysis. This represents an empirical, methodically controlled approach to the analysis of, in particular, large text documents by which the material – remaining in its communicated continuity – can be analysed according to content analysis rules while avoiding premature quantifications (compare Mayring 1997).

The quantitative data collection consisted of telephone interviews with those responsible for personnel management. On average, the interviews lasted more than 30 minutes. The population criteria were the same as for the qualitative study. One exception is the questioning of personnel management in companies with less than ten

employees (namely 6-9). These were not conducted in the qualitative study (expert interviews).

In the following section, the results of the investigations are presented for two subject areas: in the functionality of labour law as well as the effects of dismissal protection. We proceeded in the following way: In the first stage, characteristic quotes from the expert interviews are presented. In the second stage, a quantitative overview of the statements is attempted taking into account the restraint necessary in making such statements. Thirdly, the corresponding results of the standardised survey are presented.

### **3. Effects of dismissal protection – View of the personnel managers**

#### ***3.1 Estimation of the prohibitive effects of dismissal protection***

With respect to the role of labour law for new hires, the question “Which guidelines influence new hires?” was primarily asked. In the answers given by the experts, the companies’ demand for manpower was primarily stressed as the driving force for new hires. Two quotes demonstrating this:

“If I need an employee I hire one – with or without dismissal protection. And if I don’t have the work, then I don’t hire new employees simply because I can possibly just terminate them quite easily. That just doesn’t make good business sense.” (interview 19)

“The only criterion for a new hire is if we need somebody in this position or not. Then there must be a need for personnel in this shop. That’s the second aspect. The third is just a personal question which is important: Does this person fit in our company or not? Labour law gives me the possibility later to separate myself from this person if, in hindsight, I feel I’ve made a bad decision. At the moment of hiring, though, labour law doesn’t make any difference.” (interview 03)

It was occasionally stated that dismissal protection could be inhibitive in hiring new employees. A quote representing this:

“I think there has to be dismissal protection... if it didn’t exist we would have anarchy in termination of employees.... I think the employers ... would actually like to hire more people on a short term basis because things are going well at the moment but they can’t because they can’t get rid of them later.” (interview 02)

Sometimes it was explicitly claimed that dismissal protection was inhibitive for the economy or in the hiring of new employees:

“It impedes the national economy... because a lot of employers go, if they can, to other European countries to found companies, and thereby create jobs there but not here in Germany. Hiring is done more tentatively here. Precisely...because dismissal protection is so strong here and once an employee is in the company they can’t be gotten out again.” (interview 12)

Avoidance behaviour was also mentioned in this context:

“I think that without dismissal protection you, if slightly exaggerated, wouldn’t [have] any temps and you wouldn’t have to work with limited-term contracts. Or that it would be greatly reduced.... Companies would take a lot more risks. They would then hire one person too many rather than, as today, one too few. Overtime in companies might, as a result, be reduced. It’s true that companies often have their people working long hours because it’s too big a risk to hire new employees...” (interview 12)

Other factors for new hires were mentioned as well. It was possible to glean primary causes from the 41 conversations analyzed. These are listed with the number of occurrences in the table below.

**Table 1: Leading reasons for new hires (expert interviews)**

Answer	Number of Respondents
Earnings and workload situation, business situation	20
Qualifications which could benefit the company – a good “gut feeling”	10
Dismissal protection is a factor but there are strategies for avoidance	6
Dismissal protection is a crucial factor	3
Other (e.g. decisions made by the parent company)	2
total	41

Questions: Which conditions influence the decision for or against the hiring of new employees? And: How do you manage additional workload?

The paramount roles of economic conditions and the availability of manpower are clear. Most of our experts do not mention being influenced by labour law when asked about their willingness to hire new employees. The business situation is decisive and, according to our experts, no positive signals can be set by the structuring of labour law. Two statements that should demonstrate this:

„I would not agree, with the generalized ....exaggeration that labour law is bad and makes everything complicated and that labour law sees to it that we don't create enough jobs here. I don't think that labour law is necessarily responsible for this...” (interview 11)

“...the approach of creating jobs with labour law... in my opinion that is just an excuse for a political discussion. ... the only decisive aspect is: Is the economy prospering? Yes or no? If the economy is prospering than we live with the labour laws and, when not, then it isn't possible to create jobs by political means.” (interview 14)

Expressly negatively formulated statements regarding dismissal protection were not very prevalent – in contrast to the prevailing mood in the public discussion about employment law. Rather, there seems to be a more typical opinion that dismissal law is a self-evident general condition which is completely in accord with the legitimate interests of the employee, even when it has negative consequences for the company or national economy. Several of the interviewees differentiated their assessment of labour law in this context – they pointed out the need for protection of the employed but, at the same time, criticised the courts interpretation of the regulations:

“Well, with respect to arbitrariness [dismissal protection] is definitely worth preserving but, from the point of view of the employer, in a milder form with respect to the burden of proof and demonstration which they are exposed to. Generally speaking, it should surely not be done away with completely.” (interview 03)

“In principle, I think [dismissal protection] is good, simply to provide a little security. I don't consider it to be correct the way that it is interpreted in the courts today or how it can be used in individual instances to make life difficult for the employer.” (interview 35)

Complementary to the examples, a weighting on the basis of the corresponding frequency distribution now follows. The experts gave varying answers in response to the question: Which effect does dismissal protection, in your opinion, have in general on the economy and society? These answers can be characterized in the following way:

One fourth of those asked stressed the security provided to the employed, protection from arbitrariness and anarchy as well as from “hire and fire”. The survey participants described dismissal protection as creating a balance and as a part of German labour law culture. A referral to societal models is clearly recognizable here.

A good third stressed the protective function but saw, at the same, time a negative side to the coin.

Only very rarely was it stated that dismissal protection could, in part, be retardant for the labour market. This, however, was not seen as affecting the respondent’s own business or company.

Likewise, dismissal protection was rarely seen as obstructive for the economy or as a hindrance with regards to the hiring of new employees.

Altogether, dismissal protection is considered by personnel management to be senseful and worth preserving. In particular, its importance for the employed and the society was mentioned. The interpretation of dismissal protection in the courts was seen as problematic by several interviewees.

In order to generalize of these qualitative findings, the relative influence of various factors with regards to new hires was asked about within the framework of the standardised survey (see table 2).

**Table 2: Influential factors affecting new hires (in %)**

	Business situation of the company	Workload	Labour law	The banks’ willingness to grant loans	Availability of potential new employees with appropriate qualifications	Labour costs and ancillary labour costs
very important (1)	64,9	68,8	8,8	11,6	40,2	43,6
rather important (2)	27,8	21,5	21,7	14,1	35,7	36,0
partial/ partial (3)	4,8	5,5	34,2	19,2	13,2	11,3
rather unimportant (4)	1,4	1,6	21,3	20,4	6,4	3,7
not at all important (5)	1,0	2,7	14,0	34,8	4,5	5,4

Question: Which role do the following factors play in the decision for or against the hiring of new employees?

750 German personnel managers (2007)

The table shows the role of labour law in the decision for or against new hires in relation to other factors commonly mentioned in this context: Two indicators relate to labour supply, two indicators to labour demand, and finally the general conditions of financing by the banks and labour law. The astonishingly low level of significance given to labour law is remarkable

As a result of the limits upon theoretical and methodical measurements, these findings are in need of amendment. Statements made by personnel managers regard-

ing the actions of companies are of high value for two reasons: First of all, these statements are less likely to be reflective of the will of the specific person because a concrete, carried-out policy or company behaviour is asked about. Secondly, it is – within the boundaries of the possible – possible to check the validity of the statements made by means of external criteria. Measured against the criterion of actual past terminations -which can be ascertained with the help of the Socio-economic Panel (cp. Schramm 1999) – the projected statements made by the personnel managers regarding termination behaviour proved to be valid and, therefore, acceptable for the following indicators. (see image 1)

The results of explicitly asking whether or not new hires are done without – the common claim – or at least postponed are visible in image 1. Considering the prevalent discussion, the low occurrence of reported postponement of, or abstinence from, the hiring of new employees is surprising, especially considering that the question asks about a span of three years. Despite the existence of these prohibitive effects in individual cases, one can not presume, in the face of such results, a wide-spread phenomenon.

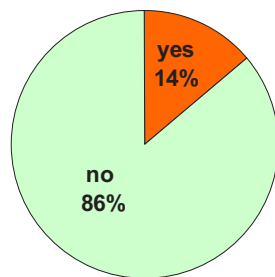
**Image 1: New hire postponements and abstentions**

## **Effects of Dismissal Protection: prohibitive**

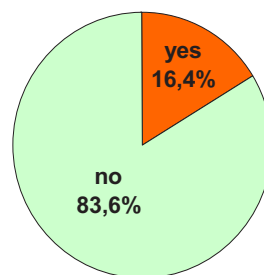
### **Quantitative Findings**

**„Have you, in the last three years, and as a result of dismissal protection ...”**

**postponed new hires**



**abstained from new hires?**



Question: Have you, in the last three years, postponed or abstained from the hiring of new employees as a result of dismissal protection?

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In total, one sixth of the personnel managers report having abstained from new hires within the last three years as a result of dismissal protection. As a result of the given external validation of the responses with regards to terminations, which could be checked with data from the SOEP, we assume the validity of the information. However this figure is, in the absence of a standard of comparison, not necessarily to be judged in and of itself. There is a trend in the media to draw a picture which surely suggests a larger rate than the relatively marginal occurrence of the prohibitive effects of dismissal protection that is shown here. On the other hand, hundreds of thousands of avoided attitudes may be hidden behind these responses – this would be an amount that should not be neglected.

### ***3.2 Under which conditions does the abstinence from new hires as a result of dismissal protection occur?***

At this point it will be attempted to identify the influencing variables regarding the abstinence from hiring new employees. Whereas the expert interviews do not provide any appropriate information on this, the standardised survey offers a multivariate model in which the abstinence from new hires is recorded as a binary variable which can be explained.

The selection of influencing factors confirms to our model, according to which personnel management behaviour is explainable by means of general conditions, characteristics of the organisation and characteristics of the person.

- *Business conditions:* region, industrial sector (branch), business situation at present and in 3 years
- *Characteristics of the organisation:* the size of the company, proportion of labour costs, development of the number of employees in the next three years, commitment to a labour contract, and the existence of a works council
- *Characteristics of the person:* The parties involved consider dismissal protection to be supportive or obstructive, the importance of long job tenure

Major variables of the general conditions of the organisations as well as the individual judgements by the personnel management to which an explanatory potential can be attributed to were included in the Logit-Model. Although variables were hardly named explicitly in the literature (with the exception of company size), at the least, a structural effect may be expected from the explanatory variables. We expect, in general, that a reporting of the abstinence from hiring new employees will come particularly from companies having a bad business situation that will, presumably, remain so. It is also assumable that differences will be found between eastern and western Germany due to divergent situations and personnel management practices. Institutionalized employment relationships also suggest that prohibitive effects will be much lower. That the size of the company will be influential at the company level is generally presumed (cp. here e.g. Pfarr et al. 2004: 193 et. sqq.; Seifert 2004: 200 et. sqq.). A higher proportion of labour costs also would suggest an abstinence from hiring new employees and the presence of avoidance strategy.

Only perception of dismissal protection as supportive or obstructive and the predicted development of personnel in the coming three years are of significant explana-



tory value. All other factors proved to be insignificant. This is also true for the discussed company size and the variables of the employment relationship. The explanatory power of the analysis is very low with a  $R^2$  of 0.14 (Nagelkerke).

**Table 3: Logit-model – Prohibitive effect of dismissal protection – Model I**

Variable	B	S.E.	Wald	Sig	Exp(B)
Csize	.0899	.1339	.4511	.5018	1.0941
Q1	.0686	.0426	2.5997	.1069	1.0711
Q11	-.2062	.1695	1.4809	.2236	.8136
Q12	-.0606	.1798	.1137	.7360	.9412
Q13	-.4636	.1726	7.2144	.0072	.6290
Q17B_2	-.5765	.1108	27.0579	.0000	.5619
Q20	.0211	.0294	.5157	.4727	1.0214
Q21	.1159	.4529	.0655	.7981	1.1229
Q9	-.0181	.1379	.0173	.8955	.9820
PERSONNEL	-.2018	.1119	3.2511	.0714	.8172
REGION	.0321	.0770	.1736	.6769	1.0326
Constant	5.2653	1.3580	15.0330	.0001	

Questions:

Csize	Company size
Q1	Would you please tell me, first of all, which industrial sector/which branch your company belongs to?
Q11	How do you judge the current business situation of your organization on a scale of 1, very good, to 5, very bad?
Q12	And how do you estimate the development of your company's economical situation in the next three years?
Q13	And, regarding the number of employees in your company, how will this develop in the coming three years?
Q17B_2	Do you consider dismissal protection to be supportive or obstructive?
Q20	Is your company committed to a labour contract?
Q21	Does a works council exist in your organization?
Q9	From a purely business management perspective, how important is long job tenure on the part of your employees for your company?
PERSONNEL	Proportion of labour costs
REGION	Region

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The explanatory power of the model for the abstinence of new hires certainly rises with an integration of diverse attitudes and judgements ( $R^2$  of 0.28 following Nagelkerke), but the variable of whether or not dismissal protection is supportive or obstructive continues to maintain its excellent value. This is an indication of the decisive role of the subjective attitudes of the personnel managers: In this way new hires are rather done without if the parties involved feel poorly informed about labour law regulations, consider dismissal protection to be more obstructive than supportive, feel themselves to be hampered by labour law and/or are not of the opinion that labour law eases personnel work.

Table 4 illustrates the connection between personnel managers' attitudes and the reported behaviour inferred from the perception of dismissal protection: the subjective perception of dismissal protection clearly influences the tendency to avoid hiring

new employees. Particularly conspicuous is the correspondence of the personnel manager's attitude towards dismissal protection and the operational prohibitive effect when dismissal protection is considered to be obstructive. The effect of dismissal protection is therefore more likely to be determined by the hiring of personnel managers than by structural factors.

**Table 4: Connection between attitudes and behaviour (1)**

Do you consider dismissal protection to be supportive or obstructive?

Abstinence from new hires crosstab.

% dismissal protection as supportive or obstructive?

		Question 34: Abstinence from new hires (in %)		
		yes	no	total
Dismissal protection as supportive or obstructive?	1 = very supportive	11,8	88,2	100,0
	2	9,6	90,4	100,0
	3	7,7	92,3	100,0
	4	15,1	84,9	100,0
	5 = very obstructive	34,5	65,5	100,0
total		16,3	83,7	100,0

Question: And do you experience dismissal protection in everyday work life to be supportive or obstructive? Have you, in the last three years abstained from hiring new employees because of dismissal protection law?

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**Table 5: Connection between attitudes and behaviour (2)**

		Question 34: Abstained from hiring new employees (in %)		
		yes	no	total
Labor law	very important role (1)	28,8	71,2	100,0
	rather important role (1)	21,0	79,0	100,0
	partly/ partly (3)	14,9	85,1	100,0
	rather unimportant role (1)	7,5	92,5	100,0
	no role at all (5)	18,3	81,7	100,0
total		16,4	83,6	100,0

Question 34 d: Have you, in the last three years, because of dismissal protection law completely abstained from hiring new employees?

Question 29: Which role do the following factors play in your decision for or against the hiring of new employees?

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Table 5 serves to underscore the connection between attitudes and behaviour. Again, a clear connection between these variables is shown so that one asks the question of whether attitudes, when isolated, have influence also when other situational variables are substantially borne in mind. The corresponding Logit-model (cp. Table 6) produces the following results: being informed about dismissal protection, the perceived importance of dismissal protection, the perception of same as supportive or obstructive and the perception of the employees which insist on their rights influence the decision to hire new employees significantly. The explanatory value in the sense of  $R^2$  is, at 0.19 (following Nagelkerke) higher than that of the analysis based upon structural data.

**Table 6: Logit-model – Connection between attitudes and behaviour (abstinence from new hires)**

Variable	B	S.E.	Wald	Sig	Exp(B)
Age	.1773	.1297	1.8674	.1718	1.1940
Csize	.0820	.1297	.3995	.5273	1.0854
Q12	-.2888	.1638	3.1083	.0779	.7492
Q15_2	-.0326	.0967	.1134	.7363	.9680
Q16_2	-.3706	.1263	8.6130	.0033	.6903
Q17A_2	.2135	.1072	3.9694	.0463	1.2380
Q17B_2	-.4179	.1122	13.8648	.0002	.6584
Q25_11	.3912	.0968	16.3335	.0001	1.4787
Q25_6	-.1761	.1341	1.7241	.1892	.8385
Q28_5	.2108	.1246	2.8608	.0908	1.2347
Q3	3.91E-05	.0007	.0032	.9551	1.0000
Q8	-.0052	.0061	.7115	.3989	.9948
Constant	2.7567	.9509	8.4045	.0037	

Questions:

Age	Age of the person
Csize	Company size
Q12	And how do you estimate the development of the economical situation for your company in the next three years?
Q15_2	Labour law was a considerable part of my training.
Q16_2	Informed-ness about Dismissal protection
Q17A_2	Importance of dismissal protection
Q17B_2	Dismissal protection as supportive or obstructive?
Q25_11	In the case of regulation infractions, employees quickly insist on their rights!
Q25_6	Labour law protects the interests of the employee!
Q28_5	Labour law forces one to carefully consider personnel policy measures!
Q3	How many employees does your company have – including those currently on paternity leave, currently serving military or alternative duties and therefore on leave or those not currently actively present – please count trainees and temps.
Q8	And what do you estimate to be the proportion of labour costs in relation to total expenses for your company?

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### 3.3 The “small” prohibitive effect

Besides the postponement or avoidance of new hires, we generally suspect an avoidance strategy on the part of the companies. There are diverse ways to avoid permanently employing a new employee – and, as the case may be, sidestep dismissal protection law. Additional projects (work loads) may not be accepted, slowly processed, or possibly given to other sub-contractors. Or a heavier work load is done by existing employees. Production volume may be increased at the cost of quality but, too, it is possible that productivity reserves may be tapped. Finally, employees may be hired for a limited time which is characterized here as the “small” prohibitive effect.

Were responses given by personnel management in the expert interviews or the standardised surveys which suggest the existence of the “small prohibitive effect“?

During the expert interviews, statements were made on various occasions regarding employment contract length limitation or temp-workers within the context of dismissal protection.

After all, 15% stressed the importance to avoidance strategies such as employment contract term limitation or the hiring of temp workers when dealing with dismissal protection. Our interviewees recognize these avoidance strategies; they also see that they do not make dismissal protection obsolete as is demonstrated by the following passages:

“...you have dismissal protection in a term-limited employment contract too... If we limit employment to one year with a probationary period of three months then you have three-fourths of one year with absolutely normal dismissal protection...” (interview 02)

In one interview a simple relation between dismissal protection and avoidance behaviour was claimed – without a clear managerial or operational reference. (see the above quote from interview 12)

The standardised surveys showed that contract term limitation was, predominantly, not a direct reaction to the pressures of labour law (in particular dismissal protection) but rather an instrument in flexibly structuring the workforce which, in addition, offers the extra benefit of avoiding the problems related to dismissal protection law for a certain time (cp. image 2). The limitation is not a direct result of avoidance strategy, which serves to underscore the importance of job tenure.

A similar picture is seen in the case of temp-workers. Predominantly, they are hired as a reaction to a spike in the work load. Labour law-related problems or personnel expenses play a more minor role. Temp-work is still of little significance in the German national economy but is, however, clearly on the increase. According to the personnel managers, the reasons for the use of temps are (multiple answers possible): peaking of the work load (82%), increasing flexibility to protect existing long-term employees from dismissal (44%), testing before permanent employment (39%), marginal occupations/activities (35%), to decrease personnel costs (25%) and its being an alternative to permanent employment (38%).

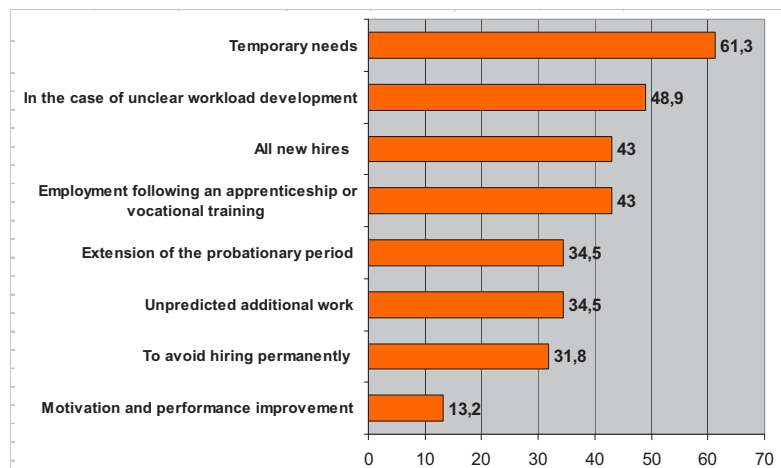
Temp-work can also be practiced as avoidance strategy. However, the motives for hiring temp-workers are manifold. In particular, fluctuations in the work load which create a short-term need for an increased work force are a central motive for hiring temp-workers. This is most likely not to be largely connected to avoidance behaviour

(cp. also Worobiej 2007). Likewise, the idea of avoiding dismissal protection is not hidden within the strategy of reducing personnel costs by paying lower wages rates.

**Image 2: Reasons for the limitation of employment contract-terms**

### **Effects of Dismissal Protection: prohibitive**

#### **Limitations were applied for different reasons:**



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The results show that the limiting of employment contract lengths is extensively practiced and that the hiring of temp-workers rarely. The motives in both cases are very clearly manifold. One point, among many, is the thought of sidestepping dismissal protection law. This may play a part in individual cases but is, however, as a rule, seen as playing a junior role.

#### **3.4 Effect within the company**

The potential role of dismissal protection exists not only within the decision making process of whether to engage new or terminate existing employees despite the fact that the prevalent debate is, as a rule, limited to this aspect. Additionally, employment is itself affected, which is depicted here with help of the psychological contract. This contract encompasses the reciprocal expectations and commitments of the partners' which are not formulated in the explicit contract and nevertheless have a major influence on the actions of the parties involved (cp. Rousseau 1995). Generally, this involves the "exchange" of willingness to perform and loyalty, for job security and payment which is subjectively considered to be fair and sufficient. In everyday life the psychological contract implicitly determines the actions of the partners. Not until conflict arises do the parties involved resort to the explicit contract – an action which can be seen as a breach of loyalty. This is especially true when external experts (attorneys) or arbitrators become involved. As a result, it shouldn't be surprising that the contractual parties attempt to settle conflicts without resorting to means of the external con-

tract and that the number of cases taken to court is relatively low. The direct importance of labour law – which tends to play more of a background role – is to be qualified accordingly.

The effects of dismissal protection on behaviour within the company are not unequivocally predictable: On the one hand, a lack of dismissal protection, and the resulting lack of job security, discipline the employees in the sense of the Shirking-model (cp. Shapiro/Stiglitz 1984: 433 ff) and, therefore, contribute to the desired work habits. In this model, a higher level of dismissal protection would make it possible for employees to perform at a lower level with their own interests in mind. Lower or falling absenteeism rates in times of high unemployment have often been interpreted this way. On the other hand, the job security created by dismissal protection encourages long-term commitment and higher qualifications on the part of the employees. This position is supported by the empirical evidence as well as by theoretical contemplations ranging from organizational-psychological to efficiency wage theoretical approaches (cp. Wagner/Jahn 2004: 127 ff). The high level of job stability may be interpreted as an attribute of the, generally speaking, highly productive German economy.

The effect of dismissal protection within the company was asked about only marginally in the expert interviews and standardized surveys and, therefore, only a limited amount of pertinent information is available.

Occasional references to the effect of dismissal protection within the company can be found in the expert interviews. This is true of both the disciplinary and motivational effects and also the possible discrepancy between the emphasis of a long tenure and a judicially anchored job security which is considered disruptive.

The personnel managers welcome job security as a stabilising factor for company behaviour but sometimes find the juristic form of its protection to be a limitation to the “entrepreneurial freedom” which implicitly expresses a distrust of the company’s social aptitudes (dependability and predictability, loyalty to its employees, rational behaviour). Only sporadically do the interviewees see labour law as a disciplinary instrument in the form of admonishment or (written) warnings. Warnings can be used to enforce discipline or to prepare the way for terminations. However, their effectiveness was seen quite critically:

“We have very, very few dismissal protection proceedings... but alone the requirements of what an employer has to do in terms of handing out (written) warnings and the possibilities available to the employee in terms of infringing on the corresponding regulations ... before a decision can even be made...” (interview 37)

It doesn’t necessarily have to be about termination, though, as the following quote shows:

“...I didn’t even necessarily want him to leave the company. I just wanted him to do his work as it was supposed to be done. And after its not having worked out over years I still said: now he’s going to get a (written) warning and then another and then the termination. Then we went to court and I, of course, lost. I actually knew I would going in but it was really about the signal it set.... And it finally had the effect I was looking for – it got better... at his age you can’t really change him but you can change certain of his habits....” (interview 28)



Obviously the warning as an instrument was not effective. Nevertheless, the interviewee sees the court case as a disciplinary signal. Ultimately, the warning didn't serve to 'teach' but, rather, to prepare the way for an effective termination.

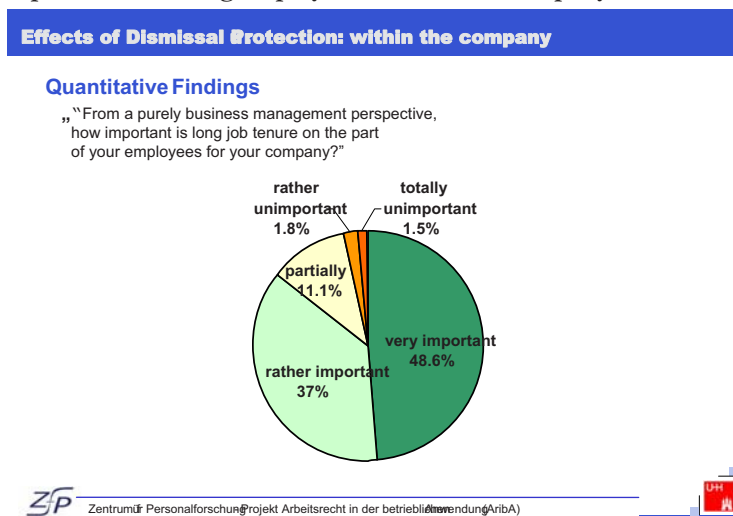
"We really try to recognize early whether or not someone fits in our company, if he wants to work or not... especially in jobs requiring physical labour... the people there are pretty emotional, aren't they? Suddenly, they just don't turn up to work if they've been out the nights before... first you talk and talk and then an admonishment. Then you give them a written warning and maybe a second. Then at some point there's the termination" (interview 15)

There are two interesting aspects in this example:

- The interviewee limits the group of people on which admonishments and (written) warnings might be effective (work without a high intellectual level – blue-collar).
- He refers to (written) warnings as an instrument for cases of drastic misconduct and thereby qualifies its applicability as a consistently integrable personnel management tool.

Despite the negative appraisal of dismissal protection, a long tenure within the company is deemed important. After all, 86% of those asked valued the long tenure as "very" or "rather important". In particular, the employees' qualifications were named as the reasons for the economic roles. Additionally a part is also played by networks, long term customer contact with the employees, etc. Motivational reasons were named as well.

**Image 3: Importance of a long employee tenure in the company**



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A portion of those asked (39%) answered that the job tenure is important and at the same time, stated that dismissal protection is obstructive. Obviously long job tenure and dismissal protection as determined by law represent independent problems for the interviewees. Analogous passages are found in the expert interviews. The respondents

found the job tenure important. This is shown in the following response, given to the question, “What would happen if there were no dismissal protection?”.

“if companies can throw employees out blindly because they no longer have any limits, it is ultimately a loss of quality. Just as in the quality of life, fear makes you sick...only a long-year employee can be a good employee. The longer they are there, the better the quality produced. It follows that the performance quality actually sinks as well, which means, that the customers get sick of it all at some point and say, ‘there are others out there’. This can ruin a company.” (interview 31)

Three levels of the importance of dismissal protection become clear in this passage:

- Job security (which is associated with dismissal protection) represents an important part of long term future planning. It is a part of the quality of life.
- Job insecurity causes stress which can make one sick and, therefore, have a negative effect on the employees’ performance
- Job tenure is a requirement for the quality of work. Job insecurity leads to a loss of quality.

This evinced value orientation – that long term future planning and quality of life are desirable – and the assumptions about the affective mechanism of security and motivation or the quality of work are not necessarily expressive of first hand experience.

Self-descriptions rarely include a repressive personnel management. The instrument of (written) warnings for disciplinary reasons or as preparation for a termination is only rarely used. The employment relationships are, from the perspective of the personnel managers, marked by cooperative dealings. Job security is of economical importance because of the necessary qualifications and motivation. Labour law has, under normal business circumstances, a “background function” and not an organisational tool. This fits with the reserved and selective use of legal instruments which affect dismissal protection ([written] warnings).

#### **4. The perceived functionality of labour law**

The public debate as well as common attitudes in the economic sector, suggest (cp. SVR 2006: 354, 370) that legal regulation is predominantly seen as a limitation. According to the common thesis, an affected company can, if necessary, create rules. The need for labour law is, therefore, from the point of view of the company itself rather low. Rather, it can be assumed, it is more about protective rights of the employees which are, at the least, non-beneficial for the business efficiency of the company. According to this realm of thought, the statements made about labour law must be predominantly marked by the thought that labour law limits a business’s freedoms.

Within the expert interviews, the functionality of labour law was addressed at many points. Here is a selection of illustrative, exemplary quotes:

“My main wish would be to see more fairness in the labour courts. Secondly, I would want that the form of wrongful dismissal suits would be softened so that employees and employers alike would be allowed to end the employment relationship without everyone making such a fuss about ‘behaviour-based, person-related’ and so on.” (interview 12)

“Yes, a simplification of hiring and terminating. Dismissal protection plays a part in this. I would wish that the labour courts would pay more attention to the content and less to the formalities.” (interview 15)

“I would want the labour courts to listen a little more to the employer, not just to the employee – especially when it’s about behaviour related terminations.” (interview 19)

“I really would like to see that that the works council and the employer were also allowed – above and beyond the general labour law – to find in-house solutions, such as loosening dismissal protection when specific requirements are there....” (interview 39)

These limitations to the freedom of action, which concurrently may also have a supportive function because of its coordination capacity, were explicitly operationalized as “perceived functionality” of labour law by means of two scales in the standardised survey. One scale raises the effect of labour law to personnel management categories. The second scale ascertains the role of labour law for human resources management in that the labour law itself is asked about in a differentiated manner. The mentioned laws or subject areas are those that are commonly subsumed under labour law. Regulations of collective labour law such as the so called “Tarifvertragsgesetz” (law for the regulation of labour tariff agreements) or other, more special laws regarding, for example, labour protection were not included.

The following overview shows the perceived influence on areas of personnel management.

**Table 7: The perceived functionality of labour law in areas of personnel management**  
(in %)

	Procurement of personnel and selection	Hiring of personnel	Organization of working times	Employee motivation	Coordination and assigning of tasks	Structuring employee remuneration	Personnel development	Dismissal of labor	Personnel planning
1	2,1	2,8	3,0	2,8	2,7	2,0	0,9	1,7	1,5
2	14,5	18,9	19,8	16,2	16,6	18,9	14,4	11,8	14,9
3	54,3	47,3	46,5	60,9	65,8	57,1	56,7	39,1	56,2
4	20,4	22,1	22,9	15,3	11,2	15,9	22,5	26,1	21,0
	8,7	8,9	7,8	4,9	3,7	6,2	5,6	21,3	6,4

1: Labour law is very supportive of my job activities / 5: Labour law is very restrictive to my job activities

Question: Now we would like to know how you perceive the influence of labour law on your daily work. (Likert)

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Only a minority of personnel managers viewed labour law as restrictive in relation to concrete areas of personnel management. It was seen as very restrictive by less than ten percent of the interviewees with the important exception of the dismissal of employees (21%). Also when it comes to a summarization of being more or less limited, only a minority – often ca. one fourth – of the personnel managers report being more or less very limited. An important exception is the dismissal of employees. Almost every second interviewee made such a claim (47%). On the other hand, there are personnel managers which stress the supportive capacity of labour law. As a rule, this supportive capacity is stressed by 20% of those asked although a small minority of these see labour law as very supportive. Hence labour law is, as a rule, in the eyes of the interviewees, non-restrictive but, however, it is also not supportive. In relation to the dismissal of employees the situation is regarded critically.

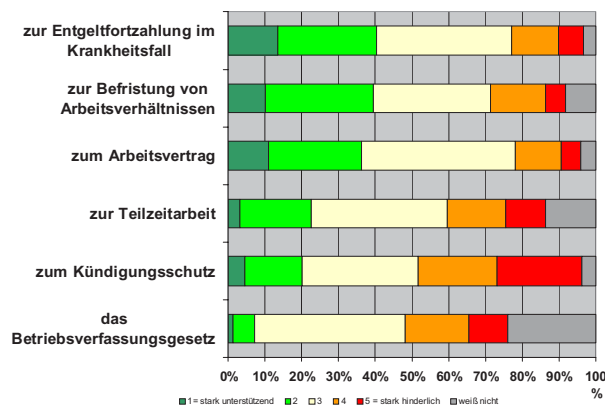
Additionally, it was checked to see which legal regulations are found to be limiting. In turn, it was to be expected that the level of scepticism towards the laws is high enough that the limiting effect of the law on the actions of personnel management would have to be stressed. However this did not turn out to be the case. The regulation of continued remuneration, contract-length limitation, part time work and the employment contract were only viewed as restrictive by a minority. These findings refer to the importance of creating generally valid rules which help to reduce transaction costs and, where applicable, competitive disadvantages. However these positive appraisals are not valid in general. Again, the assessments regarding the dismissing of employees prove to be problematic: almost half of those interviewed state that dismissal protection law is obstructive. In face of this, the 20% who view the law as supportive are noteworthy but are, however, clearly in the minority. The findings regarding the Works Council Constitution Act are less surprising. Along with a large number of non-responses to these questions – which is to be explained by the fact that most businesses do not have a works council – there were more critical than positive statements. Apparently, less than ten percent of personnel managers are convinced of the advantages of the Works Council Constitution Act.

Image 4: The perceived functionality of labour law: Arranged by law

### Perceived Funtionalty of Labor Law

#### Quantitative Findings

„Do you experience the regulation of (...) to be supportive or restrictive in your daily work?“



- (1) the continuation of payment in the case of sickness
- (2) the limitation of the length of the employment relationship
- (3) the employment contract
- (4) part time work
- (5) dismissal protection
- (6) the Works Council Constitution Act

1=very supportive / 5= very restrictive, don't know

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Altogether, labour law is seen as a necessary legal framework which primarily guarantees the protection of employee interests and provides reliable limits. In general, labour law seems – according to the impressions made by the expert interviews – to not play as large a part in the formation of a company's employment relationships as one might expect. It is not unpopular and, on the contrary is seen as a necessary frame of action. The general assessment of labour law is, thereby, worse than that of the individual, concrete personnel management areas or specific laws.

Criticism of labour law is, nevertheless, directed at dismissal protection. Dismissal protection is, in the interviews, considered to be employee-protection-law. It appears, in the statements examined by us, with an *implicitly* (restructuring, personnel situation, striking comparisons, losing court cases) negative connotation. It is then no surprise that a desire for a change in the laws regarding the termination of employees is expressed when the experts are asked explicitly about changes that they would like to see. It is obstructive especially in cases of restructuring-related lay offs or when used as an ultima ratio in cases of behavioural or performance problems. In cases of restructuring lay offs, the factors of the determined social criteria for redundancy, the notice periods, dismissal protection suits and problematic aspects of redundancy pay are bothersome. As a rule, the contexts of justification put forward by the personnel managers in the interviews have the value of anecdotal evidence in that they are often the result of generalised personal experience (with individual labour law conflicts) or even second hand experiences (possibly only hearsay). Often the assessments stand as general statements detached from concrete business experience.

There may be many different reasons for the moderate assessment of the limitations placed on personnel work by labour law. Some of these reasons may be a result of the investigative methods: the personnel managers may make these statements because of a low level of aspiration or they would not like to express their relative powerlessness within the framework of an interview. With an economical regard, however, other explanations present themselves: thusly would a relatively high functionality of labour law (only slightly obstructive, some regulations being supportive) explain this pattern of answers. Furthermore – and this may be crucial – in most companies it is not even the strategy of personnel management to apply the law in cases of conflict.

## 5. Conclusion

In this paper, the role of labour law from the perspective of personnel management in Germany was examined. This was done from a behaviour-oriented perspective and using the example of the prohibitive effect of dismissal protection and the effects thereof within a company.

It was shown empirically that the positions presented in the judicial or public debates are hardly reflected in the reception of labour law by the personnel managers. In international comparison, it is shown that different perceptions lead to different business practices (cp. Pierre/Scarpetta 2004: 24). The prohibitive effect of dismissal protection is, according to the statements made by the interviewees, is to be considered quite small. It seems rare that a company does not hire new employees as a result of dismissal protection because business situations are, in the end, decisive. As well, the often suspected avoidance strategy is only occasionally found in the descriptions made

by the personnel managers – temp work and limited contract lengths are practices used mainly due for other reasons. However, in international comparison, Pierrre/Scarpetta (2004) show that differences in dismissal protection also result in differences with respect to practicing limited term employment and with regard to qualification actions.

It is evident that the companies' non hiring of new employees – which is explained by or justified with dismissal protection – is linked to macroeconomic or managerial variables such as the business situation, branch, company size etc. However, the analysis shows that the explanatory value of these “tangible” variables is consistently low. Instead, the attitudes of the personnel managers prove to be of more explanatory value: When labour law is deemed obstructive, it is more likely that abstinence from hiring new employees is reported.

The effect of dismissal protection within a company is also not very pronounced in the self-descriptions made by the personnel managers. First of all, contrary to that of the psychological contract, labour law plays a subordinate role in a company's daily operations. Secondly, a stable workforce is also deemed very important from a personnel management point of view. Thirdly, the instruments of labour law are used for disciplinary purposes only in exceptional cases.

Incidentally, the subjective stances of the personnel managers are not necessarily a consistent reflection of a real situation. Instead, a “subjective” reception of labour law takes place on different levels which can exist relatively independent of one another: knowledge, experiences, opinions, attitudes, and moral concepts can, but must not, be in harmony with each other especially as the “objective” matter being considered is often contradictory and multifaceted. Additionally, the personnel managers organise their cognitions in such a way that sub-classing processes, in the sense of the theory of cognitive dissonance or reactance, are observable. These can, in turn, serve to reinforce the plausibility of the subjective reception of labour law.

From an international perspective, the analysis shows that, at a practical level, differences in the legal code are less important than these measurable legal differences suggest.

Apparently, personnel management's reception of labour law is significantly different from the legal discourse. Thereby, this reception is less dependent upon business situations and the organisation's characteristics as it is upon the actual people/parties involved. Apparently the individuals involved have their own (often implied) individual human resource strategy. This is, by any rate, suggested by the expert interviews (cp. Krawetzki 2007). The individual human resource strategies, which determine the behaviour within the company, correspond to certain characteristics of the person themselves (age, qualifications and informedness). With a change of the person responsible, a change of human resource strategy and company behaviour is also possible. Altogether, labour law is of relatively low significance which is, furthermore, conveyed by the subjective perception of the parties involved. It is to be assumed that a change in the reception of labour law – which is largely independent of economic trends and the business's situation – is possible with a change in those involved (personnel management). In this respect, the personnel managers are institutional parties



(cp. Alexander 1993) which, to a certain extent, are capable of determining company behaviour by means of their own individual strategies.

**Table 8: An overview of empirical results**

Subject Area	Standardised Survey	Expert Interviews
"large" prohibitive effect of dismissal protection	Labour law is of low importance for the decision making process in terms of hiring new employees. It ranks behind the situation on the product and labour markets. The avoidance of new hires is dependent on the perception of labour law and less upon the economic general conditions or characteristics of the company	Our respondents felt, altogether, neither hindered by labour law -in particular dismissal protection – when making hiring decisions nor did they believe, as a rule, that a change in dismissal protection would lead to more employment.
"small" prohibitive effect of dismissal protection	Limitation of the length of labour contracts and the hiring of temp workers were founded by different motives. The sidestepping of dismissal protection may play a junior role in individual cases.	Limitation of the length of labour contracts and the hiring of temp workers are seen as a transitional form to a regular employment which could not really help to solve problems associated with dismissal protection (long dismissal protection periods, determined social criteria for redundancy, unpredictable dismissal protection court cases, obligation to and amount of redundancy payments).
Effect of dismissal protection within a company	According to the statements made by personnel managers, labour law is rarely used as a disciplinary or motivational tool. Nor is this desired. Almost 90 percent of personnel managers consider long job tenure of their employees to be "very" or "rather important" from a business management point of view.	The effect of dismissal protection within a company is to be presumed as marginal. Only in exceptional cases is job insecurity (communicated in the form of [written] warnings or threats of termination) used -and in these cases more symbolically. Job security is necessary for business management because of qualifications and motivation. Personnel managers are interested in stable employment relationships.
Functionality of Labour Law	When asked about the influence of labour law on personnel management fields, labour law (with the exception of dismissal protection) is considered much less obstructive but, also, not supportive. When asked about concrete legal regulations, some are pointed to as supportive and others as limiting. Here again, dismissal protection is described as limiting.	The criticism of labour law is concentrated mainly on dismissal protection. 25% of those asked would like to see a loosening of dismissal protection. Likewise, 25% would like a more flexible dismissal protection and 34% a precise, transparent labour law and uniform employment-contract legal code.

## References

- Alexander, J. C. (1993): Soziale Differenzierung und kultureller Wandel. Frankfurt/New York: Campus.
- Bauer, J.-H. (2005): Arbeitsrechtlicher Wunschkatalog für mehr Beschäftigung. In: Neue Zeitschrift für Arbeitsrecht 18: 1046 ff.
- Bauer, K./Bender, S./Bonin, H. (2004): Betriebe reagieren kaum auf Änderungen beim Kündigungsschutz. In: IAB Kurzbericht 15: 1 ff.
- Bielinski, H./Hartmann, J./Pfarr, H./Seifert, H. (2003): Die Beendigung von Arbeitsverhältnissen: Wahrnehmung und Wirklichkeit. In: Arbeit und Recht 3: 81ff.
- Bielinski, H./Ullmann, K. (2005): Arbeitgeberkündigungen und Klagequote. In: Bundesarbeitsblatt 10: 4ff.

- Bogner, A./Littig, B./Menz, W. (Hrsg.) (2002): Das Experteninterview. Theorie, Methode, Anwendung. Opladen. Leske&Budrich.
- Bothfeld, S./Ullmann, K. (2004): Kündigungsschutz in der betrieblichen Praxis: nicht Schreckgespenst, sondern Sündenbock. In: WSI-Mitt. 5: 262ff.
- Bradtke, M./Fischer, N./Hübner, S./Schramm, F./Zachert, U. (2004): Personalpolitische Wirkungen von Arbeitsrechtsreformen. In: WSI-Mitteilungen 3: 138ff.
- Bradtke, M./Schlese, M./Schramm, F. (2005): Personalpolitische Rezeption des Arbeitsrechts: Konzeptionen in umkämpftem Terrain. In: WSI-Mitteilungen 5: 589ff.
- Brehm, J. W. (1966): A Theory of Social Reactance. New York.
- Brehm, J. W. (1972): Responses to Loss of Freedom. A Theory of Psychological Reactance. Morristown.
- Castendyk, O. (1994): Rechtliche Begründungen in der Öffentlichkeit – Ein Beitrag zur Rechtskommunikation in den Massenmedien. Opladen.
- Coleman, J. (1995): Grundlagen der Sozialtheorie. München, Wien.
- Falke, J./Höland, A./Zimmermann, G. (1981): Kündigungspraxis und Kündigungsschutz in der Bundesrepublik Deutschland, Bd. I und II. Bonn.
- Festinger, L. (1962): A theory of cognitive dissonance. Stanford. Verlag Psychologie Verlags Union.
- Gössig, C. (2005): Der psychologische Vertrag. Saarbrücken.
- Höland, A./Karl, U./Zeibig, N. (2005): Wirklichkeit und Wahrnehmung des Kündigungsschutzes. In: WSI-Mitteilungen 10: 561ff.
- Höland, A./Karl, U./Zeibig, N. (2007): Kündigungspraxis und Kündigungsschutz im Arbeitsverhältnis. Baden-Baden.
- Höland, A./Kahl, U./Ullmann, K./Zeibig, N. (2004): Recht und Wirklichkeit der Kündigung von Arbeitsverhältnissen – Erste Erkenntnisse aus der Forschung. In: WSI-Mitteilungen 3:145ff.
- Huber, G. (2005): Beschäftigungsfördernder Wunschkatalog. In: Neue Zeitschrift für Arbeitsrecht 23: 1340ff.
- Isaksson, K./Bernhard, C./Claes, R./De Witte, H./Guest, D./Krausz, M. et al. (2003): Employment contracts and psychological contracts in Europe. Results from a Pilotstudy. (Rep. No. 1).
- Jahn, E. (2002): Zur Ökonomie des Kündigungsschutzes. Berlin.
- Kania, Th. (2004): Angebliches Arbeitsrecht. In: Betriebs-Berater 42: P. I.
- Kania, Th. (2005): Geschriebenes und geltendes Arbeitsrecht. In: WSI-Mitteilungen 10: 596ff.
- Kessing, S. (2004): Überraschende Wirkung. In: WZB-Mitteilungen 104: 36ff.
- Klimecki R./Gmür M. (1998): Der Einfluss des Arbeitsrechts auf die Personalpolitik. In: Martin, A./Nienhüser, W. (Hrsg.): Personalpolitik – Wissenschaftliche Erklärung der Personalpraxis. München/Mering: 483ff.
- Krawetzki, C. (2007): Organisationales Lernen. In: Abschlussbericht des Forschungsprojektes Arbeitsrecht in der betrieblichen Anwendung. Hamburg (in Veröffentlichung).
- Kunda, Z. (2000): Social Cognition – Making Sense of People. (2 ed.) Cambridge, Massachusetts, The MIT Press.
- Löwisch, M. (2005a): BB-Forum: Maßnahmen zur Vereinfachung und Beschleunigung im Arbeitsrecht. In: Betriebs-Berater 47: 2580ff.
- Löwisch, M. (2005b): Vereinfachung und Beschleunigung im Arbeitsrecht – 15 Vorschläge. In: Betriebs-Berater 31: P. I.
- Martin, A./Bartscher-Finzer, S. (2003): Psychologischer Vertrag und Sozialisation. In: A.Martin (Ed.): Organizational Behaviour. Stuttgart: Kohlhammer: 53-76.
- Martin, A. (2003): Organizational Behaviour. Stuttgart, Kohlhammer.
- Matiaske, W. (2004): Rational Choice as a Basic Theory of HRM. In: management revue 2: 249-263.
- Mayrhofer, W. (2004): Social Systems Theory as Theoretical Framework for HRM. In: management revue 2, 178-191.
- Mayring (1997): Qualitative Inhaltsanalyse, Grundlagen und Techniken., Weinheim, Deutscher Studienverlag.
- Mohr, J. (2006): Beschäftigungsförderung durch Kündigungsförderung. In: Zeitschrift für Arbeitsrecht 37: 547ff.

- Möschel, W. (2006): Kündigungsschutz und Beschäftigung – ein Scheinproblem? In: Juristenzeitung 3: 113ff.
- Neubäumer, R. (2006): Der gesetzliche Kündigungsschutz aus ökonomischer Sicht. In: Sozialer Fortschritt 1: 25ff.
- Neuberger, O. (1995): Mikropolitik – der alltägliche Aufbau und Einsatz von Macht in Organisationen. Stuttgart.
- Nienhüser, W. (1998): Macht bestimmt die Personalpolitik! Erklärung der betrieblichen Arbeitsbeziehungen aus macht- und austauschtheoretischer Perspektive. In: Martin, A./Nienhüser, W. (Hrsg.): Personalpolitik – Wissenschaftliche Erklärung der Personalpraxis. München/Mering: 239ff.
- Nienhüser, W. (2003): Macht. In: Martin, A. (Hrsg.): Organizational Behaviour – Verhalten in Organisationen. Stuttgart, 139ff.
- OECD (1999): Employment Outlook. Paris.
- OECD (2005), Employment Outlook. Paris.
- Peuntner, T. (2002): Einfluss des Arbeitsrechts auf Beschäftigungsentscheidungen, Köln.
- Pfarr, H./Bothfeld, S./Bradtke, M./Kimmich, M./Schneider, J./Ullmann, K. (2004): Personalpolitik und Arbeitsrecht – Differenzierung nach der Unternehmensgröße? In: Recht der Arbeit 4: 193ff.
- Pfarr, H./Ullmann, K./Bradtke, M./Schneider, J./Kimmig, M./Bothfeld, S. (2005): Der Kündigungsschutz zwischen Wahrnehmung und Wirklichkeit. München und Mering.
- Pfarr/H./Zeibig, N., (2006), Pro und contra Abfindungsrecht bei Kündigungen. In: Schäfer, C./Seifert, H. (Hrsg.): Kein bisschen leise: 60 Jahre WSI. Hamburg: 131ff.
- Raiser, Th. (1999): Das lebende Recht, Rechtssoziologie in Deutschland. 3. Aufl., Baden-Baden.
- Richter, R./Furubotn, E. (1999): Neue Institutionenökonomik. 2. Aufl., Tübingen.
- Röhl, K. F. (1987): Rechtssoziologie. Köln/Berlin/Bonn/München.
- Rottleuthner, H. (1987): Einführung in die Rechtssoziologie. Darmstadt.
- Rousseau, D. M. (1995): Psychological Contracts in Organizations – Understanding Written and Unwritten Agreements. Thousand Oaks, California, SAGE.
- Rüthers, B. (2003): Mehr Beschäftigung durch Entrümpelung des Arbeitsrechts? In: NJW: 546ff.
- Rüthers, B. (2006): Der geltende Kündigungsschutz – Beschäftigungsbremse oder Scheinproblem?. In: Neue Juristische Wochenschrift 23: 1640ff.
- Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung (2006): Jahresgutachten 2005/06. Wiesbaden.
- Sadowski, D. (2004): Arbeitsrecht zwischen Markt und gesellschaftspolitischen Herausforderungen: Differenzierung nach Unternehmensgröße? In: 65. Deutscher Juristentag, Bonn.
- Schramm, F. (1999): Arbeitnehmerverhalten und Arbeitsmarkt: Das Sozioökonomische Panel in der Personalforschung. Schäffer-Poeschel, Stuttgart.
- Schramm, F./Schlese, M./Kattenbach, R. (2007): Wissenschaftliche Perspektiven und Grundmodell. In: Abschlussbericht des Forschungsprojektes Arbeitsrecht in der betrieblichen Anwendung. Hamburg, (in Veröffentlichung).
- Schramm, F./Zachert, U. (2005): Arbeitsrecht – Personalpolitik – Wirklichkeit. Baden-Baden, Nomos.
- Seifert, A. (2004): Arbeitsrechtliche Sonderregeln für kleine und mittlere Unternehmen. In: Recht der Arbeit, Heft 4: 200ff.
- Shapiro, C. und Stiglitz, J. (1984): Equilibrium Unemployment as a Worker Discipline Device. In: American Economic Review 74: 433ff.
- Stein: (2006): Abschied vom Arbeitsrecht? In: WSI-Mitteilungen 2: 110ff.
- Wagner, T./Jahn, E. J. (2004): Neue Arbeitsmarkttheorien. 2. Aufl., Stuttgart, Lucius&Lucius.
- Weber, W./Kabst (2006): Einführung in die Betriebswirtschaftslehre. Wiesbaden, Gabler.
- Worobiej, Aleksandra (2007): Interne und externe Flexibilität unter besonderer Berücksichtigung der Leiharbeit. In: Abschlussbericht des Forschungsprojektes Arbeitsrecht in der betrieblichen Anwendung. Hamburg, (in Veröffentlichung).
- Zachert, U. (2004): Beendigungstatbestände im internationalen Vergleich. Baden-Baden, Nomos.
- Zachert, U. (2004a): Kündigungsschutz, Befristung und Leiharbeit in Europa. In: WSI-Mitteilungen 3: 132ff.