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3/2017

Unterwegs

En route

On the way

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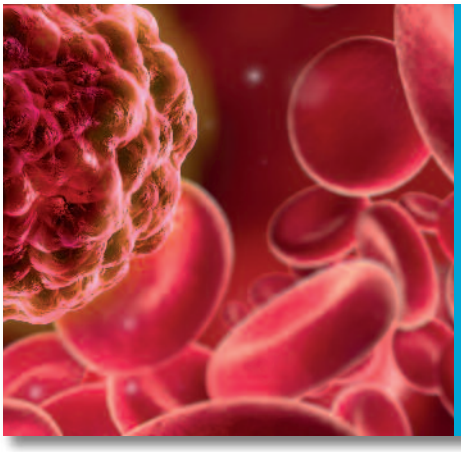
novartis employees' association



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Many – most probably the overwhelming majority of members – were traveling this summer and were able to enjoy their holidays. Hopefully everything went well and you were all able to relax thoroughly or become acquainted with new experiences. For the NAV, our journey "together along the way" continues.

Despite the summer, the deadlines marking the end of the consultation process continue to approach, which is why the majority of employee representatives continued to work on this intensively. The consultation proposals were presented to Novartis in mid-August. One of the proposals' most important and clearly formulated objectives will be the implementation of opportunities that will allow as many redundancies as possible to be avoided. Where this cannot be achieved everywhere, any employee departures must be structured to be as socially responsible as possible.

A big thank you goes to all the members on the internal staff representations for their tremendous effort in working tirelessly on behalf of those affected by the reorganization and for providing comprehensive support to these employees.

At the time of publication of this *info* edition, Swiss voters will already have voted on the "Altersvorsorge 2020" proposal, the reform of retirement provision. As always, the people are the ultimate arbiters and the referendum result will need to be implemented accordingly. In an article about this, the most important points that can exert an influence on our pension funds – depending on the referendum result – will be reiterated. It will be the task of the boards of trustees of pension funds to implement these and, where possible, ensure that any reduction in benefits is avoided.

"Dismissal made easy" is not intended to be cynical or ironic, but to help create clarity in this complex subject area. Since our partner, arb – Region Basel Employees – repeatedly receives questions and inquiries about this and because the subject is also likely to spark off heated discussions, the "Dismissal made easy" article discusses termination activities in detail. This article is deliberately being published as a whole in order to put across a total overview – even if it might seem longer because of this. However this also allows it to be used as a reference guide.

The field of stem cell research that uses parthenotes as a source for cells is now discussed from a legal standpoint. By doing so, we hope to give our readers an in-depth insight into a topic that is far from being settled.

Over and above these interesting subjects, a review of a professional development event put on by Employees Switzerland, our umbrella organization in Switzerland, and an invitation to an NAV-internal professional-development activity, also about "Resilience," complete the picture this month.

We hope that you enjoy reading the articles and look forward to receiving your responses – whatever they may be. Don't forget to recommend us internally to your colleagues, since only in this way can we as an association become more widely accepted.

Should you have any questions or queries, we naturally remain at your disposal.

In this spirit, your NAV President
Claudio Campestrin

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Presentation of consultation recommendations

concerning the announcement of "job cuts" on May 18, 2017

On August 11, 2017, the Internal Employee Representative Councils (ERCs) presented the consultation recommendations with a covering letter to upper management. The Chief Executive Officer of Novartis and other members of the Executive Committee also received the consultation recommendations.

Davide Lauditi
Chair of the Employee Representative Council (PV-A)

What was presented to the Executive Committee on August 11, 2017?

After Novartis publicly announced on May 18, 2017, that it planned to cut 500 jobs, the ERC opened the consultation period. On August 11, 2017, the ERC presented the company with a comprehensive 75-page document, setting out recommendations devised in such a way as to prevent near-term job cuts. As a second measure, if the first recommendations cannot be fully implemented, the ERC presented proposals to minimize job cuts. Recommendations were also submitted to minimize the consequences of redundancies. This was the order in which the recommendations were prioritized.

A three-month consultation phase sets the bar very high for all future consultation windows, but this deadline was critical. Due to the three-month timeframe, the ERC was able to take crucial steps such as involving the affected employees in the consultation process. The employees concerned work in the following areas:

NTO (Chemical Operations), Global Drug Development GDD (GDO), Pharma and NBS.

The complexity of these units, the different reasons, the different approaches to a solution and the completely different demographic populations prompted the ERC to divide the consultation group into four sections.

Consultation recommendations: NTO (Chemical Operations)

Since the ERC consists of the PV-A (representative body for employees with individual contracts) and the GAV (representative body for employees covered by collective bargaining agreements) and a large proportion of the GAV population is employed as operating staff at NTO (Chemical Operations), the GAV representatives worked together with two team members of the PV-A, delgees by NAV (Novartis Employees' Association) to prepare the recommendations for the NTO area.

This group focused particularly on the topics of work-life balance, the shift model, part-time employment, training, substitution and early retirement, strategy, temporary positions, and financial incentives for self-employment. Here we provide brief information on some of the topics mentioned.

Shift model: In order to retain jobs, specific recommendations were made regarding a change to the shift model.

Work-life balance and part-time employment: It is possible to save jobs by promoting this existing model. Furthermore, we recommended that this should be implemented on a voluntary basis.

Training: For the planned 100 new positions in Biologics (DEV), we recommended the development of specific training modules in collaboration with professional training organizations. The training required must be tailor-made, ensuring that Novartis employees can also fill the new positions.

Strategy: Facts about Novartis' planned and changed strategy on the subject of ChemOps Switzerland were presented, focusing on long-term planning.

Consultation recommendations: Global Drug Development (GDO)

The following topics and recommendations were presented: Basel versus Hyderabad, costs, no layoffs, talent development should come before layoffs, job offers, suspending external recruitment. Here are some of the arguments and facts.

Costs of Basel versus Hyderabad: In our opinion previous relocations did not generate any cost savings. On the contrary: employees have told us that important information was lost due to the dismissals of experienced employees. The desired recruitment which should have taken place locally did not always occur as planned. Furthermore, we are convinced that the personnel costs saved made up just a tiny fraction compared to the costs of the study. Is it worth taking such risks for such negligible savings? This was the main thread of our arguments.

Talent development should come before layoffs: The Novartis company objectives for 2017 included investment in its employees. Novartis has recognized that this is the foundation for its future. In view of this, layoffs surely cannot be included in this type of investment. Recommendations were made as to how this can be implemented.

Job offers: Our proposal, backed up by a series of possible measures, was that potentially affected employees should all receive an internal job offer before any advance notice of termination is issued.

Consultation recommendations: Pharma

Here, too, great emphasis was placed on the "appointment process for new jobs," with the following additional points: "above country model" and the central role of Switzerland, loyalty and company success, simplification and efficiency, sustainability and planning.

"Above country model" and the central role of Switzerland: On this topic, we have argued that the annual WEF Global Competitiveness Index Award, for example, and other important facts would make it particularly attractive to have new global functions and positions in Switzerland.

Loyalty and company success: On this topic, we presented both facts and arguments from the ERC and comments from employees, which certainly gave the Executive Committee food for thought.

Simplification and efficiency: One of our central arguments was that the outsourcing of support functions has led to a higher burden being placed on employees, which will doubtless continue to increase. This means that employees with important functions are now overloaded with administrative activities, for example, leaving them unable to concentrate on their important core tasks. In addition, we believe that the costs of these shifted and outsourced services are increasing sharply every year. It appears that the only important factor is that support functions (jobs and costs) are no longer directly visible.

Consultation recommendations: NBS

Here we considered the functions in REFS, Procurement, IT, FRA and PLS. One of the good news to come out of this organization was that better personnel planning has been carried out. Nevertheless, we have not been provided with important information which is why we argued that we can only conduct an effective consultation once we are aware of all intentions and specific projects.

Support from many employees

We were delighted with the numbers of employees who supported us with impressive contributions that only those "on the ground" can understand. We would like to thank everyone for their assistance.

A new development in the evaluation of the consultation recommendations

We have attached an assessment scale to all recommendations. The company and the ERC will individually evaluate the degree of implementation of the recommendations, with the aim of conducting an objective review to see how effective the consultation process is.

As already mentioned in the introductory paragraph, extensive documentation was presented to the company by the ERC. This article was intended to provide you with a little insight into the way a consultation process is conducted. We would also like to extend our thanks once again to all those employees in the affected areas who have actively supported us in the consultation process.

Pension scheme reform "Altersvorsorge 2020" – a situation analysis

On September 24, 2017, the Swiss go to the polls to vote on the "Altersvorsorge 2020" package of pension reforms. Without prejudging the outcome of this vote, we wish to highlight a few points which may have an impact on the Novartis pension funds 1 (PK1) and 2 (PK2) and where subsequent adjustments may be required.

Claudio Campestrin
NAV president

Early retirement

The age at which an individual may take early retirement will be increased to 62, although it may be taken from the age of 60 at the earliest in certain circumstances. Flexible retirement will be permitted up to the age of 70. The age at which retirement benefits will be paid out without supplements or deductions will be the same for men and women, at 65 years old. These new age limits must also be taken into account and implemented by the Novartis pension funds 1 and 2.

Reduction in the coordination offset

Under obligatory occupational pension provision, the minimum insured earnings previously amounted to CHF 3,525. For employees earning a salary of between CHF 21,150 and CHF 28,200, only this minimum amount was insured. The reform proposes to reduce the coordination offset and make it more flexible; it will now be 40% of income, or a minimum of CHF 14,100 and a maximum of CHF 21,150. At Novartis, it is likely that contributions will be higher for both employer and employee.

Continued pension provision after the age of 58

If the employment relationship of an insured person over the age of 58 is terminated by the employer, the individual may continue to pay into the current pension fund to provide for their retirement. They can choose whether they only want to bear the risk insurance and administration costs, or whether they want to continue to finance the savings contributions as well.

New BVG buy-in option

The newly planned buy-in option under the second pillar has very far-reaching consequences. On the one hand, it is necessary to specify the maximum possible buy-in amount. On the other hand, the type of credit must be defined: in pension schemes where the BVG is represented by the shadow account – as is the case with Novartis PK1 – a buy-in always leads to a simultaneous increase in the regulatory and BVG accounts.

Alongside all these possible changes (depending on the outcome of the vote), one central element of the proposed reform will not have any impact on the PK1 pension fund: the reduction of the conversion rate. The reform package provides for a reduction in the interest rate applied to the obligatory BVG cover from 6.8% to 6.0%. Because the PK1 is designed as an all-inclusive pension plan, i.e. salaries of up to CHF 150,000 are insured, the conversion rate used in this plan is already different from that required by law, amounting to 5.35% at the age of 65 as set out in the regulations, and already takes into account the latest technical bases, the BVG 2015 generation tables.

Under the current solution, as well as in the event that the new "Altersvorsorge 2020" package of reforms is adopted, special attention has been and will continue to be paid to maintaining the current level of benefits. Naturally this will continue to apply. The benefit target is 60% of the insured (average) salary, and the members of the Board of Trustees of the NAV will do everything in their power to maintain this.

If you have any general questions, please do not hesitate to contact us. However, consultations on individual cases can only be carried out by the administrative office of the Novartis pension funds, since only they have the full details relating to each particular insured person.

Elections for Internal Employee Representation 2018 – make use of your participation rights

Would you like to:

– become part of the social partnership with Novartis?

– help structure the work environment within the framework of legal participation rights?

Candidates wanted for the election of the Internal Employee Representation (IPV) 2018

We would like to draw your attention to the fact that the election of the Internal Employee Representation will be held in 2018. If you are interested in getting involved with the Internal Employee Representation please contact ***Claudio Campestrin,*** NAV President *(claudio.campestrin.at.novartis.com)* and ***Davide Lauditi,*** Chairman of the Employee Representation for employees with individual employment contracts *(davide.lauditi.at.novartis.com)* remain at your service to answer any questions you may have about the candidacy and the tasks of the employee representation.

On the move for employees

Virginie Jaquet, Hansjörg Schmid

Korab Macula, attorney for Employees Switzerland, entered the building of General Electric in Birr with resolve in his stride. It was July 5, 2017. Employee organizations had been invited to a social partner information briefing – which is a portent of bad news. When advisers and attorneys from Employees Switzerland pay a visit to a company, it is frequently to solve a problem or to deal with a crisis. On the day in question, the redundancy of up to 99 employees at General Electric had been announced.

Luckily, the jobs of Korab Macula, Christof Burkard, Daniel Christen, Pierre Serge Heger and Virginie Jaquet entail a lot more than putting out spot fires when the fire alarm has been raised. They are responsible for a multitude of other tasks. Every week, they visit employee representatives to assist them in their role – for example, when a redundancy scheme or new rules governing expenses need to be introduced. Such visits to companies are not only used to maintain contact with employee representatives and the member organizations of Employees Switzerland, but also to maintain good relations with employers. "It is uppermost and foremost for us that dialogue between employers and employees at companies is kept open," explains Korab Macula.

"It is equally important to give the employee representatives the tools they need to carry out their work," adds Macula. It is precisely for this reason that Employees Switzerland organizes courses and seminars in Olten and on company premises. "Training employee representatives is one of our most important tasks, next to informing employees about important trends and developments in the labor market," explains Christof Burkard, Head of Social Partnership at Employees Switzerland. At the request of a member organization, he recently gave a presentation on the proposed reforms to retirement provision.

Equally, the exchange of information and experiences is also important for Employees Switzerland. Regional meetings and sector conferences that are held regularly every year serve this very function. The sector conference for the chemicals/pharmaceuticals industry employees, for example, is held three times a year. "The participants appreciate being able to network. It is important that attendees are offered this opportunity," asserts the association advisor Daniel Christen.

Like his colleagues, Christen also visits companies to make new contacts. Making the association known at places where this is not the case is also one of the tasks of these five colleagues. They have no time to rest on their laurels – they are continually on the move to assist employees and employee representatives at Novartis amongst others.

Employees Switzerland

A seminar on “Resilience”

Ana Pérez
Employees Switzerland – Manager Training Courses

On Friday, September 8, 2017, the Professional Development 2017 workshop was held in Zurich.

Every year, the umbrella organization Employees Switzerland organizes this networking event for training officers of the various member organizations.

This year, an interactive program was presented on the topic of resilience. The speakers, Sandra Henlein (plan8.ch, psychologist (lic.phil.), coach and supervisor BSO/SGfB) and Géraldine May (qualified publicist HF, Federal Diploma in NHP and physical therapy), demonstrated to us how we could better deal with the challenges of everyday life, whether situations of stress or radical change, or just general uncertainty. The educational backgrounds of the two speakers contributed a unique blend of mental, emotional and physical aspects and their overall impact on our whole being.

It was clearly demonstrated that resilience is more than just an ability. Rather, it is a conscious internal attitude, a forward-thinking decision about how and in what way we want to go through our lives. The workshop enabled us to work together to find ways of integrating this into our individual day-to-day routine.

Speakers on the topic of resilience: Sandra Henlein and Géraldine May

nav weiterbildung formation continue further training

Being resilient means taking a versatile approach to life, meeting circumstances with flexibility rather than resistance. If we remain connected with our inner experiences and actions, we are more balanced. Even in difficult situations we act appropriately and authentically in the moment.

Employees Switzerland offers a **wide-ranging program of courses** – visit their website and be inspired:
www.employees.ch/training-courses/

Dismissal made easy?

The notice of termination: its conditions and consequences are complex, the associated emotions are usually heightened and mutual understanding at the time of dismissal is often exhausted. A considerable number of cases are taken to court. In this article I wish to pass on to you some key facts and recommendations to help dispel any uncertainties.

Regula Steinemann
Attorney-at-law and Managerial Head,
Employees' Association Basel Region (arb)

Principle of freedom to terminate

In Switzerland, the principle of freedom to terminate applies. There is no need for any material grounds for dismissal to exist for a dismissal to be lawful. Exceptions apply for public appointments and for agreements that stipulate conditions to the contrary. This means that, in principle, everyone can be terminated, unless waiting periods or dismissal reasons that are an abuse of rights, which I will get to later, exist.

Necessity to be given a notice of termination

The notice of termination will take effect when it is received by the addressee. The date on which the termination was sent, or (if the addressee has not become aware of it) the point in time at which the recipient could and should have become aware of this under normal circumstances is the determining factor. Without a provision to the contrary (i.e. in an employment or collective employment contract), notices of termination can be given verbally, by email, fax, etc. One should desist from this, not only for reasons of evidence, but also because mutual respect and a respectful handling of the situation should be maintained. In my opinion, a joint meeting should be held beforehand with the objective of broaching the issue of termination and the reasons for this. The notice of termination should then be handed over personally during the meeting and its receipt acknowledged in writing. Alternatively, it may be sent afterwards by registered post to the party to the contract.

Registered notices of termination that are not collected

Unlike in the case of court documents (which, if they are not collected, are deemed to have been served on the last day of the seven-day collection period of the postal service), where registered notices of termination are used, termination takes place on the day on which the collection is generally expected. This may already be the day of the delivery attempt, provided that it is reasonable to expect the recipient to collect the letter immediately at the post office. Unnecessary discussions and uncertainties will be avoided if notices of termination are sent such that, even where collection takes place on the 7th day of the collection time limit, the termination notice period is observed.

Compliance with termination notice periods

Notice periods are stipulated in (collective employment) contracts or regulations, for example. Where an agreement does not exist, the Code of Obligations applies in its place. Where one party gives notice of a date far in the future, the other party, provided that the notice period is observed, can issue a counter-notice of termination for an earlier date. The response, however, must not be seen to be abusive. This was confirmed by the Basel-Stadt Labor Court when an employee with a one-month notice period gave notice three months in advance, in order to give his employer time to search for a successor, upon which the employer immediately gave one month's notice of termination.

Limitations to the freedom to terminate: no improper grounds for termination and no waiting periods

A notice of termination that has been issued can be improper or void if it has been served during a waiting period as per Article 336c of the Swiss Code of Obligations. A notice of termination may not be served, and any termination period already commenced will be suspended during these waiting periods. This clause is intended to address cases of illness through no fault of the employee, pregnancy and mandatory military or civilian service. Its application in practice is very complex and will be discussed using two examples.

Invalidity of a termination

Example 1: The employee must attend military training school from March 14 to July 15, 2018. On February 20, 2018, the employer serves notice to the employee that his employment will be terminated at the end of July. The employee receives this termination notice on February 22, 2018.

In the period during which the employee is performing a service in compliance with Article 336c of the Swiss Code of Obligations (and provided that this military service lasts longer than 11 days, as it does in our example), the employer is not permitted to serve a notice of termination, nor is this permitted four weeks before or after this period. The attendance of military training school is considered to be military service and a waiting period from February 14, 2018, to August 15, 2018, must be observed. Since the termination falls within the waiting period, the date on which the notice of termination was received will determine whether the termination is invalid or not. In this case, the notice of termination is received by the employee on February 22, 2018, i.e. during the waiting period which is in

force. The termination is therefore void and the employer will need to serve a further notice of termination after the expiry of the waiting period (after August 15, 2018), if he wishes to terminate the employment relationship.

Extension of the notice period

Example 2: We have the same situation, but where the employer serves notice to the employee on December 30, 2017, that his employment will be terminated on February 28, 2018, after a two-month notice period. Since the notice of termination was served prior to the waiting period (i.e. before February 14, 2018), the termination is lawful and valid. The notice period however will not have elapsed before the commencement of the waiting period. This means that the notice period will be suspended and only resume after the waiting period has elapsed. As a consequence, the employment relationship will end at the end of August 2018.

End date

An end date, i.e. the end of the month, will normally apply to the termination of the employment relationship. Where, because of the waiting period, the resumed notice period does not coincide with the end of the month, it will, in most instances, extend to this point. This can lead to unsatisfactory consequences for the employer, namely that he will need to pay an additional full month's salary on account of a few days of sickness-related absence, for example. Where the resumed termination notice ends on September 2, 2018, for example, the employment relationship will continue until the end of September 2018. According to the Federal Supreme Court, this is the intention of the law. In cases of justified suspicions of misuse, depending on specific circumstances, the prohibition of the abuse of rights can lead to corrections.

Multiple waiting periods

Every new case of prevention attributable to a new cause, will – according to the Federal Supreme Court – give rise to a new waiting period. If the employee becomes ill several times during the notice period, any consideration of a new waiting period will depend on whether the illness is the same or a relapse (no new waiting period) or whether the illness is unrelated to the earlier illness (new waiting period).

Grounds for termination that are not an abuse of rights

The terminated party is entitled to request a written statement of reasons for the termination. This should enable an assessment to be undertaken of whether abuse grounds are present or not. The statement of reasons must be complete and true. Article 336 of the Swiss Code of Obligations lists the grounds where a termination can be considered an abuse of

rights, however this list is not exhaustive. A termination is understood to be improper where it takes place on the grounds of a personal trait that the other person is entitled to because of their personality, provided that this trait is unconnected with the employment relationship and it does not significantly affect the ability to work together. This means that termination solely on the grounds of sex or origin may be an abuse of rights. In addition, terminations that occur because a constitutional right has been exercised (i.e. the right to belong to a political party) are an abuse of rights. Where a termination has been made to thwart entitlements stemming from the employment contract (i.e. long-service gifts), a misuse of rights should also be investigated. The same applies to terminations that are carried out as part of a mass layoff where the employee's representation was not consulted in advance, or are carried out because the employee is a member of an employee association or an elected employee representative. Our practice has identified further case groups; termination notices that are served pending a change of the employment contract can, for example, be an abuse of rights where the change is intended to introduce an unfair worsening of employment conditions that cannot be attributed to any operational reasons. The abuse of rights can also result from the manner and way in which a termination is made.

Discriminatory termination according to the Gender Equality Act (GEA)

The constitution lays down the principle of the equivalence of the sexes, which is also reflected in the Gender Equality Act. Based on Article 4 of the GEA, a claim for compensation may be asserted in the case of a discriminatory termination. The application of the Gender Equality Act singularly deals with disadvantages where men and women are compared, i.e. terminations because of gender, for example where a pregnancy exists, or because of family circumstances.

Assertion

An objection (in writing and by registered letter for proof reasons) must be raised with the terminating party within the current period of notice, i.e. the objection must be received by the terminating employer before the end of the notice period. If the parties are unable to reach an agreement (in particular regarding the continuation of the employment relationship), the terminated party must file a lawsuit within 180 (calendar) days after the termination of the employment relationship. Except in the case of "revenge terminations" as per Article 10 of the Gender Equality Act, legal action cannot be taken to effect a reinstatement. Claims only for reparation by way of financial compensation for a maximum of six months' salary are allowed. Supplemental claims for compensation or damage are conceivable.

Advantageous reduced burden of proof in the GEA

In the field of application of the Gender Equality Act, discrimination in a termination is presumed if this is shown to be credible by the person affected (Article 6, GEA). The employee must "make credible" the argument that gender-based discrimination existed, i.e. a certain degree of probability must support this. Where such an argument is successful, an infringement is presumed and a reversal of the burden of proof takes place: the employer must now demonstrate that no discrimination was present or that a preferential treatment was justified (a reduced burden of proof does not apply here). A reduced burden of proof similarly does not apply to instances where terminations are an abuse of rights.

Terminations of long-serving, older employees no longer a rarity

Cases across the industry of terminations of older, long-serving employees (50+) who are in part being replaced by younger (and frequently, more affordable) employees are becoming more common. The Federal Court has increasingly strengthened the protection against dismissal for older employees and now stipulates an increased duty of care when older employees are dismissed.

Increased protection against termination

The Federal Court has, amongst others, ruled on two cases of an abusive dismissal of older, mostly long-serving employees. The first case concerned an employee who was due to retire in around one year and who had already worked for the employer for 44 years. The Federal Court considered the dismissal to be improper because the employee apparently carried out his work "without grounds for complaint" and the employee was also not listened to prior to the dismissal. The employer was ordered to pay the maximum financial compensation of six months' salary.

In the second case, the dismissal of a 59-year-old employee who had been employed for 10 years (much longer if employment interruption taken into account) was also judged to be improper. The employee returned to his job after a burn-out, but there were certain shortcomings in his work performance. During the ensuing three years the employer took various actions to achieve an improvement, however these were unsuccessful. Despite the efforts of the employer, the Federal Court considered the dismissal as improper and awarded two months' salary to the employee. The Federal Court of Appeal acknowledged the employer's efforts, however stressed his increased duty to provide care and the specific obligations stemming from this. Criticisms included the fact that the employee was not made aware that he would face dismissal if his/her work performance did not improve. The employer should have sought dialogue with the employee and drawn their attention to a "last chance" for improvement as well as the consequences of non-improvement (impending dismissal).

Consequences

The employer has a duty to inform employees at an early stage of the impending specific consequences in the event of a failure to remedy unsatisfactory performance or improve behavior. The employee must be allowed to respond to the allegations that have been made against them and they must be given sufficient time as well as offered support (i.e. by way of coaching) to give them a realistic prospect of achieving improvement. It is

the duty of the employer to seek out solutions to how the employment relationship can be upheld. Uncertainty exists as to the specific age from which this additional protection is to be granted to employees. Certain schools of thought advocate that this should apply to people from 55 years of age.

Termination agreements

Increasingly, companies are choosing the option of a mutually amicable dissolution of employment by using a termination agreement (see also the June 2016 article about this in *info)*. Such offers usually contain a period of paid-for coaching plus an extended notice period with an immediate release from work. Since these offers go beyond the statutory minimum requirements and legal action to seek redress for a possible abuse of rights entail a (cost) risk, most employees accept such offers. It is prudent to seek advice at an early stage if you find yourself in a situation like this.

Extremely stressful situation for those affected – no solution in sight

For the employees affected, it is a shock to receive a notice of dismissal after years of commitment and loyalty to their employer. Many are unable to cope with this stress, fall into a state of depression and only a few find the strength to defend themselves against an abusive dismissal. The search for employment at an older age is also difficult. Employee associations, politicians and companies must act – there needs to be a rethink. The expertise and experience of older employees should not be underestimated and corrective measures need to be taken in hand where necessary. What these measures are is still contested: some advocate an extended notice period and more objective protection against dismissal – while others are convinced that this would lead to earlier dismissals. I would call into question whether everyone over 50 years of age, for example, could actually be replaced by younger employees, yet improved dismissal protection will hardly bring about an improvement. That's because older employees frequently have the highest wages and require the highest social security contributions. Perhaps this would be a good starting point and equal social security contributions or a professional development obligation, for example, should be introduced. What we are dealing with is a societal problem that should be solved sooner rather than later.

En route to a human spare parts storage facility

Stem cell patents repeatedly give rise to heated debate. Naturally, the critical discussion and ethical concerns must be taken into account. Nonetheless, stem cell research harbors great potential for biomedicine. However, parthenotes, a special type of stem cell, preclude some of these criticisms due to their nature. Will there be a "store of human spare parts" in the foreseeable future? Will patents of this kind constitute a sufficient economic incentive to pursue these ideas in a long-term and meaningful way?

Daniel W. Szpilman
Guest author and freelance journalist

In my last contribution to *info* Magazine, I wrote about the dream of a storage facility for human "spare parts" and the possibility of using stem cell technology to get closer to this goal. I also described the most superficial fundamentals of stem cells and parthenotes, i.e. embryonic stem cells obtained by means of the process of parthenogenesis. Recently there has been consensus among Western researchers that stem cells must certainly be used for scientific and therapeutic purposes in order for humanity to advance. Be that as it may, a major cause of controversy is the way in which stem cells are procured – in most cases involving the destruction of embryos, which generates a bioethical debate.

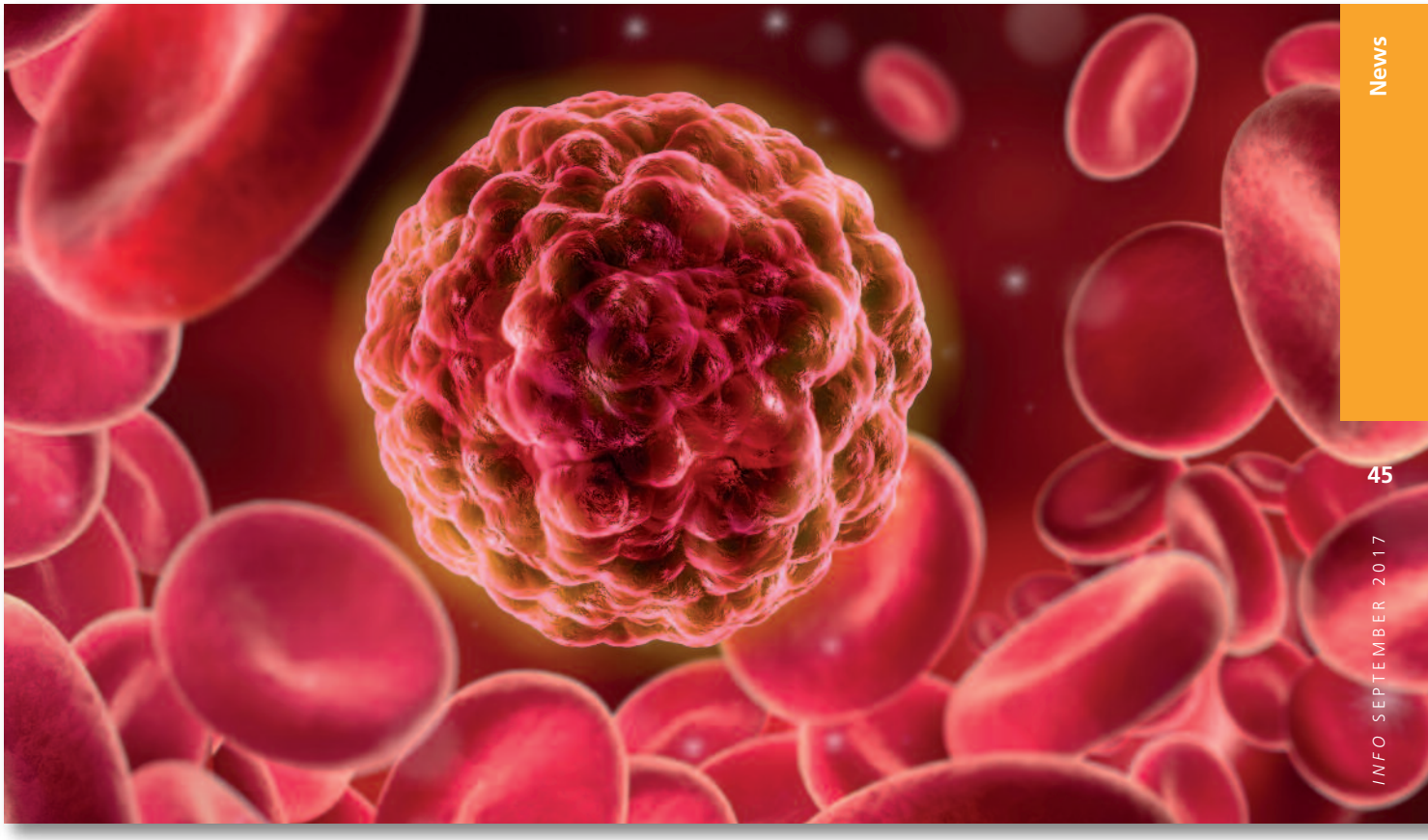
To clarify: stem cells are cells which have two main properties. On the one hand, they have the ability to form a specialized cell in the body, such as pancreatic, skin, or muscle cells. Secondly, and key to the concept of stem cell therapy, the stem cell is able to renew and divide itself, and this ability to divide is unlimited. As already mentioned, stem cells are often obtained from human embryos, as a consequence of which the embryos are destroyed.

For this reason, researchers have been searching for alternative ways of acquiring stem cells without destroying embryos, thus reducing the ethical issues. If the production of stem cells is associated with the destruction of human embryos, the resultant product is excluded from patentability according to the principles of European law, as in the famous case of Brüstle v. Greenpeace, which was ruled upon by the European Court of Justice (ECJ). In 1999, the German researcher Oliver Brüstle from Bonn wished to file a patent application for producing purified neural progenitor cells – i.e. immature cells that are able to form mature nervous system cells, e.g. neurons – from embryonic stem cells. These could then be transplanted for the treatment of neurological diseases such as Parkinson's or Alzheimer's. Greenpeace accused Brüstle of having destroyed embryos, sparking the discussion about what an embryo actually is and, accordingly, what method of obtaining stem cells did not involve the destruction of embryos. Inevitably this brought into play the process of obtaining human stem cells by means of parthenogenesis. Parthenogenesis is the name given to the process of fertilizing a female ovum without the use of male sperm cells, also known as "virgin" cell division, which is derived from the Greek word παρθένος, parthenos, or "virgin" in English. As a result, this procedure is excluded from the traditional definition of an embryo and thus no destruction of an embryo takes place when stem cells are recovered.

The court ruled against Brüstle and for Greenpeace, meaning that Brüstle's patent on stem cells was no longer recognized because the court ruled that the product protected by the patent had involved the destruction of embryos. Did this mean that the hope of a human spare parts storage facility was lost forever? No, because the ECJ also implicitly stated in the Brüstle judgment that patentability would be permitted if no human embryos were destroyed in the production of stem cells.

Only three years later, in 2014, the same court issued a very different ruling in the case of the International Stem Cell Corporation (ISCO) versus the Comptroller General of Patents, Designs and Trademarks of the United Kingdom. In this landmark judgment, the two institutions met before the ECJ with a similar issue as in the Brüstle case. But the court had to consider the question of what a human embryo actually is, in the context of the EU Biopatent Directive, in order to be able to debate whether an embryo had indeed been destroyed when stem cells were obtained, thus rendering patentability impossible. The case involved two patent applications. The British Patent Office rejected the patentability of both applications, arguing that it was a matter of patenting inventions which constituted a commercial "use of human embryos for industrial or commercial purposes," which is why there would be grounds for exclusion in accordance with Article 6 para. 2(c) of the Biopatent Directive, and referring to the Brüstle judgment issued by the ECJ several years previously.

The British Patent Office no longer raised the question as to whether parthenotes are cells encompassed by the concept of an embryo; instead, it assumed this to be the case from the outset and referred directly to the exclusion clause in the above-mentioned article of the Biopatent Directive. Naturally, it referred to the Brüstle case (interestingly, as this demonstrates how such a judgment can have an impact over the medium and



long term. Think of the unreported numbers of attempted patent applications, which were ultimately not decided upon by the ECJ and therefore remained unknown to us). ISCO argued that parthenotes per se are not capable of initiating the process of developing into a human being, and thus fulfillment of the grounds for exclusion under the article mentioned is not relevant.

In the judgment, the Advocate General of the ECJ ruled that the state of knowledge about parthenotes in 2014 was different from that in 2011, and that the ECJ at that time was laboring under a misconception caused by asymmetric information, which explained the verdict in the Brüstle judgment. It is, of course, difficult to assess the legal situation in cases which are directly dependent on the level of scientific knowledge in fields which are rapidly evolving – with a minimum of consistency but which must still be sufficiently sound to provide a basis for a decision by the European Court of Justice. Since the state of knowledge in 2014 was different and more enlightened as far as parthenotes are concerned, the court ruled in favor of ISCO, concluding that parthenotes are not covered by the definition of an embryo because they never have the potential to become a fully developed human being as the biological basis for this is lacking. Now the situation was very different. Suddenly, patents were allowed on parthenotes – a step which had seemed impossible just a few years previously. However, the legal situation seemed to be totally relativized, which inevitably led to uncertainty for researchers, investors and companies. Would the ECJ come to another, different conclusion a bit later down the line? It's possible.

We will have to wait and see how future decisions will turn out. However, patents on parthenotes have created a financial incentive and will certainly mean that people will have to deal with this issue more frequently going forward. Patents promote investment by setting financial incentives, which in turn could lead to rapid advances in science in this field.

Are parthenotes the answer to many different health problems? Are they, ultimately, the solution – a natural legacy for which mankind has been searching in medicine for years – because they are ethically unobjectionable and, what's more, patentable? This is hardly likely, for even the greatest and most liberal advocates of producing stem cells from human embryos created by parthenogenesis recognize that this new solution throws up many new (factual, legal and bioethical) problems which will require critical debate. For example, stem cells derived from parthenogenesis could be rejected by the human body in a different way from other cells. Obviously, researchers have come up with an – in my opinion – ingenious solution to this problem, under which embryonic stem cells can be customized to make them compatible with the desired recipient, thus preventing rejection reactions as far as possible. However, this patient-specific adaptation process raises the question of data protection, which is particularly important in the Internet and social media era of the 21st century. What if these patient-specific data were to be used or passed on illegally? What if they could be used to mislead in criminal evaluations of genetic data?

In addition, Japanese researchers have succeeded in breeding a viable organism in the form of a mouse from a parthenote, by means of genetic modifications. Thus the ECJ was concerned about the sheer possibility, even if it constituted an abuse. Ultimately, abuses are always possible. The question arises whether parthenotes lay themselves open to gross legal and bioethical abuses. Again, this question could form the subject of a completely separate legal or bioethical dissertation: "Abuse is always possible"; fear is a poor companion, and should not deter scientists from considering more controversial experiments.

These and many other issues will doubtless occupy our minds for a number of years to come. It remains to be seen which factual, legal and bioethical solutions are found to these questions. What's certain is that we live in exciting times.

COLUMN

Where there's a will ...

It is estimated that about three million people in Switzerland like to spend their free time out hiking. There is a network of 65,000 kilometers of footpaths for them to enjoy. And now bikers and skaters can indulge in their hobby on specially marked routes, too.

Whereas the Basel Museums Night last January was being held for the 17th time, the "Swiss Hiking Night" which took place at the start of July this year was the 12th edition. With its guided Bat Walk, Full Moon Walk and Murder Mystery Walk, the Swiss Tourist Office was seeking to draw attention to the fact that hiking has become the most popular form of sport and exercise in Switzerland. According to its statistics, the proportion of the population who enjoy hiking rose by 7% between 2008 and 2014. That means that, in the entire Swiss population, there are three million people who, equipped with their red socks and walking poles, regularly go out hiking in our valleys and mountains.

Out and about on Shanks's pony

For those enjoying this booming hobby, there is a carefully maintained and perfectly signposted network of footpaths all over the country totaling 65,000 kilometers in length. And, contrary to popular belief, they are not only in traditional rural and mountainous areas such as Central Switzerland, the Bernese Oberland, Valais and Graubünden, but also in the more urban areas of lowland Switzerland. Even the highly industrialized canton of Basel-Stadt, which, with an area of just 37 km^2, is only small, nevertheless contributes 70 kilometers to the national footpath network, some of them crossing international borders, and some passing right through Basel's city center. Together with the 1100 kilometers that allow happy hikers to explore the natural beauties of the surrounding countryside, that makes a total of 1170 kilometers of footpaths in Basel-Stadt and Basel-Land, all maintained in perfect condition by the idealists in the "Footpaths of the Two Basel Cantons Association" and signposted with the familiar yellow signs and dia-

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mond-shaped markings. By the way, there are signs like this on the footpath along the bank of the Rhine which passes to the north of the Novartis site, and is part of the official Swiss footpath network.

Rolling along

Whereas the first Swiss footpaths were marked out in 1935 and the governance of footpaths was enshrined in the Constitution in 1979 and regulated in a "Federal Act on Footpaths and Hiking Trails" in 1985, official inline skating routes are far more recent. However, they have been expanding all the quicker in recent years, so that skaters (as roller-skaters now trendily call themselves) have a better and denser network of routes in Switzerland than anywhere else in the world. At least, so say the organizers of the national "SchweizMobil" project which is what enables inline skaters to go rolling along hundreds of kilometers of tracks in our country. These are used by nearly 750,000 habitual skaters, which means that one in ten of all Swiss people – no doubt including expats of all nationalities – is regularly out and about with their rollerblades strapped to their feet. The routes accessible to inline skaters have now almost all been mapped and marked with the distinctive signs featuring the rollerblade icon. These currently mark out three national routes, two of which join together to make a continuous 450 km route between the Rhine Valley at St. Gallen and Lake Neuchâtel, the longest signposted skating route in Europe. Of the 13 regional skating routes, one is in the Basel region; the circular "Erlen Skate" route runs 12 kilometers from the Badischer Bahnhof in Basel past the Eglisee open-air pool to Weil am Rhine and then back through the recreational area of Lange Erlen to the starting point.

Free ride for cyclists

Now of course the Swiss don't only get out and about on foot and on rollerblades in their free time, but have always also done so on their bikes. That applies particularly to the people of Basel who, thanks to the bicycle-friendly traffic policy of their local government, live in the ultimate cycling city. bikers (as cyclists call themselves nowadays) of all kinds benefit from this, not only in the daily slalom race between the city's red lights and the roadworks all over the region, but also in their free time. The website *www.outdooractive.com* features no fewer than 148 varied cycling routes, offering attractive excursions around the region not only for those with touring bikes but also for those riding racing bikes, e-bikes, city or mountain bikes. From "By bike through Roman times" to "The quick way to get a high" and the "Tiersteinberg Mountain Biking Route," they cover everything that can be discovered by following safe routes on two wheels.

So you can see that wherever people want to enjoy some exercise on foot or rollerblades or by bike in their free time, there's bound to be a way for them to do it in our region.

Sources:
www.wanderwege-beider-basel.ch
www.wandern.ch
www.skatingland.ch
www.basel-unterwegs.ch/de/Velo
www.outdooractive.com/de/radtouren/basel-und-umgebung