

# Austrian Labor Law

## Contract of employment

The contract of employment imposes a mutual obligation upon employer and employee, which consists not only in providing services once, but implies a conduct which prevails for some time.

There is generally no specific form requirement for a contract of employment; this means that it can be concluded orally, in writing or through conclusive action. If the employment contract is not put into writing, the newly-hired employee must be given information in written form ('Dienstzettel') which outlines his most important rights and responsibilities.

A one month trial period can be arranged. During this time, both the employer and the employee can terminate the contract of employment without explanation.

## Working hours

Normal working time amounts to 40 hours per week. In some sectors, the collective agreement stipulates fewer working hours, for example 38.5 per week. The standard time spent at work may also be exceeded. In the case of overtime, employees are to be generally reimbursed with 50 percent extra pay, or 100 percent when the work is carried out at night, on Sundays or on holidays.

Several changes have been implemented as a result of the currently valid law regulating working hours, which was passed in 1997. Work on Sundays still requires special approval, however the new regulations allow for broad-based flexibility, e.g.: 7 day shifts are permitted if justified from both a technical and economic point of view.

Calculated over a period of eight weeks, working hours can total up to 60 hours per week and the working day can amount to 12 hours. The new regulations enable more flexible working models.

## Vacation

After six months of employment, every employee is legally entitled to an annual paid vacation amounting to 30 working days or five weeks respectively (Saturday is considered a working day). This right applies to people who have been employed for less than 25 years. Starting in the 26th year of employment, the entitlement to holidays increases to 36 working days annually. During this period, the employee continues to receive his salary.

Employees are not required to work on the following official public and church holidays:

1<sup>st</sup> January (New Year's)  
6<sup>th</sup> January (Epiphany)  
Easter Monday  
1<sup>st</sup> May (Labor Day)  
Ascension Day  
Whit Monday  
Corpus Christi  
15<sup>th</sup> August (Maria Ascension)  
26<sup>th</sup> October (Independence Day)  
1<sup>st</sup> November (All Saints' Day)  
8<sup>th</sup> December (Immaculate Conception)  
25<sup>th</sup> December (Christmas)  
26<sup>th</sup> December (Boxing Day)

Legal holidays which fall on a weekend do not automatically result in the following Monday being designated an official holiday.

## Termination of employment

The labor contract may be terminated as follows:

- The pre-defined period of work has elapsed
  - At any time during the trial period
  - Resignation of the employee before contract expires
  - Consensual termination
  - Notice by the employee
  - Notice by the employer
  - Dismissal by employer
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- **Resignation of the employee before contract expires**

If an employee's health is impaired or good cause for immediate termination of the employment can be sufficiently demonstrated, the employee is legally permitted to terminate the employment contract effective immediately without abiding by the legal period of notice.

- **Notice by the employee**

Regardless of the working time specified in the contract, the legal period of notice is always one month. If agreed upon, the period of notice can be extended to six months.

- **Termination of employment by the employer**

The notice of termination of employment (dismissal notice) is an unambiguous declaration, in which it is stipulated that the working relationship will be terminated at a specified date. The dismissal by the employer is legally permitted without the employer required to precisely specify the reasons for the termination of the employment contract.

For salaried employees, the legal term of notice amounts to:

| Year of service                          | Period of notice |
|--|------------------|
| 1 <sup>st</sup> and 2 <sup>nd</sup> year | 6 weeks          |
| 3 <sup>rd</sup> – 5 <sup>th</sup> year   | 2 months         |
| 6 <sup>th</sup> – 15 <sup>th</sup> year  | 3 months         |
| 16 <sup>th</sup> – 25 <sup>th</sup> year | 4 months         |
| after 26 <sup>th</sup> year              | 5 months         |

For blue-collar workers, the legal term of notice amounts to:

|                |         |
|----------------|---------|
| after 4 weeks  | 1 week  |
| after 1 year   | 2 weeks |
| after 5 years  | 4 weeks |
| after 10 years | 6 weeks |

### **Old Severance Pay System**

The former severance pay system regulated by law ("Abfertigungssystem alt") only applies to employment contracts which were concluded before January 1, 2003. It prescribes the legal obligation on the part of the employer to make severance payments in case the employee is given a notice of termination of employment.

The entitlement to severance pay does not apply in the case of an employee giving notice to the employer, or when the employee ends the employment contract without providing due and sufficient cause, or if the employer is to be blamed for being dismissed without notice.

### **The New Severance Pay System**

The new system regulating severance pay applies to all employees who have concluded a new contract of employment after January 1, 2003.

The employer and employee are legally permitted to implement the new severance pay system, even if the contract was concluded before January 1, 2003. The basis is a voluntary, separate agreement in written form to be signed by both parties.

The advantages of the new system:

- The employee is fully entitled to severance pay even if he himself has terminated the contract of employment. The severance pay will be deposited in a kind of 'contingency fund'.
- People who have been employed for less than 3 years and are dismissed by their employers are also entitled to severance pay. The employee has two choices: to have this amount paid out in cash (after 3 years) or the acquired severance pay is carried over for future reimbursement.
- Termination of employment by the employer does not involve any direct payments on the part of the employer, and thus does not directly burden the employer financially.

- **Dismissal by the employer**

The employer has the possibility to terminate the employment contract effective immediately. There are several valid reasons, e.g. disloyalty, refusal to carry out the agreed-upon work or theft.

## Residence permit

People who want to remain in Austria for more than six months within a specified 12 month period require a residence permit. This regulation does not apply to citizens of Switzerland and Liechtenstein, to citizens of all member states of the European Union (including newly-admitted EU member states) and the European Economic Area. The residence permit requirement is also waived for people involved in research and development work, as well as for university teachers.

Generally, applications from abroad are to be initially submitted to the respective Austrian embassy or consular office. In addition to submitting the application before entering Austria, the first-time applicant is required to document that he has arranged for accommodations in Austria, and that he has a secure income or sufficient funding to cover his basic needs

A residence permit is generally issued for a period of one year. Each renewal is valid for a maximum of two additional years. The application to extend the residence permit, which can also be submitted in Austria, must be handed in before the period of validity expires. If the applicant can demonstrate residency in Austria for a period exceeding five years (without interruption), an unlimited residence permit may be granted.

## Work permit

Foreigners who want to work in Austria require a work permit. This requirement is waived for citizens of EU member states (EU15) and the European Economic Area. Transitional provisions are in effect for up to seven years to regulate the employment of citizens from the newly-admitted EU member states. These interim regulations do not apply to people from Malta and Cyprus.

The Austrian employer is required to apply for a work permit on behalf of the future foreign worker at the appropriate AMS office (Public Employment Service Austria). The foreign employee is only entitled to be granted a work permit if he is in possession of a valid residence permit. The work permit is granted for a specified job, and is valid for a maximum of one year. The work permit is considered to be extended if the application for an extension is submitted before the work permit expires.

Managers and highly-qualified employees are exempt from the overall quota. There is usually no problem whatsoever in arranging for work permits on behalf of employees in management positions.