

# 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.

An amendment to the Working Time Act will enable companies to make its use of their employees on a 24 x 7 basis, 365 days a year, under certain conditions. The maximum working hours will be extended to 60 hours a week and 12 hours a day. Apprentices can be more easily dismissed than in the past. In the future, companies will also be able to dismiss their apprentices at the end of each year of apprenticeship.

## 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:

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

- **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.

#### **• 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.