

CHAPTER 13. REGULATIONS UNDER LABOUR LAW

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13.1. Collective agreements

The collective and intracompany social partnership plays an important role in the concrete shaping of the wage structures and industrial relations. Centrally organised groups representing various interests conclude collective agreements mostly on the sector level. In the collective agreements in addition to wages and salaries, substantial working conditions (flexible working time, periods of notice for termination of work contracts, wage supplements) are regulated. The regulations under collective agreements often replace legal minimum provisions with more favourable regulations. Thus, by means of the collective agreement, uniform standards for pay and working conditions can be established, which has a distinctive influence on the terms of competition.

In contrast to other countries, collective agreements in Austria are valid for all employees within a sector, whether they are trade union members or not. As only a portion of all employed persons are members of a trade union, this effect of collective agreements has an important function against downward pressure on wages. The regulations of collective agreements have an immediate influence on individual employment contracts and can neither be restricted (or cancelled) by individual contract terms, nor by works agreements to the disadvantage of the employees. However, agreements to the advantage of the employee are usually possible.

On meeting particular pre-conditions, the law provides – besides the statutes (declaration of general application of collective agreements) – the official stipulation of minimum provisions for wages by ordinance (minimum wage rate) for those few employment relationships not

covered by a collective agreement (less than 10%).

13.2. Works councils and agreements on company level

Works councils are an important body representing employees within their companies. The law provides that every company permanently employing at least 5 employees is obliged to establish a work council. However, there are no sanctions if this obligation is not fulfilled. Works councils operate independently of unions but, over 90% of works councils members are also trade union members. Works council members enjoy special legal protection and protection against dismissal.

The most important instrument for workers' participation are mutual agreements at company level. The right to conclude such agreements can only be exercised by the works council. Legal provisions and collective agreements define areas which can be regulated by mutual agreements. Mutual agreements are principally operative for all employees of a company. Depending on the content of the works agreement, the legal means of enforcing the agreements vary depending on the content. Further, the works council disposes of a large number of legally defined rights to information, monitoring and consultation with regard to the company management.

13.3. Working hours

Statutory standard working hours

The law defines a standard working time of 8 hours per day and a standard working time of 40 hours per week. Standard working hours defined by collective agree-

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ment may also be below this standard. Due to these agreements the standard working time per week in most sectors of industry is below 40 hours. If the number of working hours exceeds the standard working hours, this is considered as excess hours or as overtime, and an obligatory supplement of 50% per hour must be paid or compensated by a corresponding compensation time. As a rule, the total working hours (= standard working hours + overtime) may not exceed 10 hours per day and an average of 48 hours per week within the period for averaging working time defined by law and the collective agreement, including the possibility of working up to 50 hours in individual weeks.

Flexible structuring of working hours by collective agreements

The concrete shaping of working hours, basically regulated under the Act on Working Hours (Arbeitszeitgesetz/AZG), and of the corresponding pay is elaborated by the collective partners or – in the frame of the respective collective agreements – by mutual agreements. The Act on Working Hours provides a far reaching flexibility of the working hours, which, however, is bound to a corresponding regulation within the collective agreement and, therefore, the approval of the trade unions. This system provides e.g. for the possibility to negotiate issues of safety at work or of

more attractive schemes for compensation for overtime work in connection with higher flexibility of working hours within the frame of collective agreements or mutual agreements.

Within the frame of the Act on Working Hours, the collective agreement can fix more flexible models for the calculation of the average working time within a certain period, thereby extending the standard working hours per day, as well as the admissible standard working hours per week. Within a certain period (= period for averaging working time) the average working hours per week may not be exceeded. If the average working hours determined at the end of a period for averaging working time exceed the average working hours per week, this surplus is considered as overtime work. Principally the possibility of shaping flexible working hours increases with the size of the respective compensation in free time periods. A period for averaging working time up to 52 weeks and – in connection with several consecutive weeks of free time – longer, can be settled by collective agreements. Within the respective period for averaging working time, the standard working time per day can be set at 9 hours. However, the parties to a collective agreement have the option of extending the standard working hours up to 10 hours per day in connection with the introduction of

Scope for the shaping of flexible working hours in the frame of collective agreements:

Maximum admissible period for averaging working time	Maximum admissible standard working hours/week	Maximum admissible standard working hours/day
up to 52 weeks longer than 52 weeks only with several consecutive weeks of compensation time	up to 48 hours up to 50 hours only with period for averaging working time of a maximum of 8 weeks	up to 9 hours up to 10 hours only in conjunction with - 4-day week or - compensation time to be consumed in several consecutive days and with period for averaging working time of up to 52 weeks - several consecutive weeks of compensation time with a period for averaging working time of over 52 weeks

Actual working hours per week in % of employees, 2004

	Total	Men	Women
up to 24 hours	13	3	24
25-35 hours	10	2	18
36-40 hours	54	63	45
over 40-hours	22	31	12

Source: Austrian Statistics Office: sample survey

the 4-day week or longer periods of free time. The standard working hours per week can be extended to a maximum of 48 hours and even 50 hours, if the period for averaging working time does not exceed 8 weeks.

Actual working hours in Austria

In 2004, for more than half of the employed (54%) the actual working hours per week amounted to between 36 and 40 hours. Over one fifth of the employed (22%) usually worked more than 40 hours. Men work overtime more frequently than women, while women – significantly more often than men – work up to 35 hours per week only. The part-time ratio (less than 36 working hours per week) for women is 42%.

13.4. Entitlement to annual leave

In Austria a minimum annual leave is fixed by law. Every employee is entitled to at least 5 weeks or 30 work days (= all days in the year except Sunday and public holidays) per working year. If an employee has been employed by the same employer for over 25 years, he/she is legally entitled to a leave of 36 working days or 6 weeks.

Employees undertaking heavy manual labour during night-shifts are entitled to an additional leave of up to 6 work days per year depending on the years of service. As a protective measure for the employee, the leave has to be consumed during the existing working relationship. Financial

compensation instead of consuming the holiday is not permitted.

13.5. Family related regulations under labour law

Regulations on maternity protection

Protective provisions for expectant mothers ensure the protection of life and health of expectant mothers and their unborn children. They are applicable to employees. These provisions include the prohibition of work harmful to expectant mothers or the unborn child, as well as the prohibition of night work, work on Sundays, work on public holidays and overtime for expectant and nursing mothers. For the period of eight weeks before until eight weeks after birth (12 to a maximum of 16 weeks, it is not permitted to employ a pregnant woman.

Release from work until the child's second birthday

Parents are entitled to unpaid parental leave in order to care for an infant or a small child until the child's second birthday. Mother and father can alternately claim parental leave (the parents receive child care allowance during this period).

Part-time work for parents

In companies employing more than 20 employees, parents are entitled to part-

time work up to the child's seventh birthday or the child's later school start if the working relationship has persisted for at least three years. Start, duration and shaping of the working time must be agreed upon with the management. If no agreement can be reached, legal action can be taken at the Labour and Social Court. The court decides after balancing the interests of both parties.

Protection against being laid-off or dismissed

Pregnant women can only be laid off for particular reasons, e.g. due to closure or lasting reduction of the capacity. As a rule the consent of the Labour and Social Court is necessary in such cases. From the beginning of pregnancy until four months after birth or four weeks after the end of parental leave or of part-time work according to the Law on maternity protection (until a maximum of 4 weeks after the child's fourth birthday) an employee holding an unlimited employment contract may not be laid off. In the case of part-time work beyond the child's fourth birthday, it is not permissible to lay off a mother based on her choice of part-time work.

The father's protection from being laid off begins when he declares his wish to claim parental leave or to work part-time, which is 4 months before the start of the parental leave or of the part-time work at the earliest. It ends, as for the mother, four weeks after the end of the parental leave or the part-time work.

Care leave

If a close family member (e.g. children, partner, parents) requires care and there is no other possibility to provide it, employees

can claim a care leave of up to one week, paid for by the employer. For employees with children up to 12 years a further week of care leave per year can be claimed.

Family hospice leave

With the introduction of family hospice leave in the year 2002, the possibility of accompanying dying family-members or children with severe illnesses was created. Persons taking on the task of accompanying dying family members or severely ill children are covered by health and pension insurance during this period. In special cases an allowance funded by the Family Burden Equalisation Fund is granted.

13.6. Educational leave

Educational leave provides the possibility for employees to take leave for education or further education for a period of three to twelve months. The employee has no means with which to force the employer's consent; however, if the leave is agreed upon, the employee is entitled to the corresponding protection from dismissal being laid off. For the duration of the educational leave he/she draws a cash benefit of the same amount as the child care allowance (= approx. Euro 440 per month, 2005) from the unemployment insurance. Persons over the age of 45 years are entitled to a further education benefit of the same amount as the unemployment benefit. If an employee takes a leave for other reasons than education, entitlement to a benefit from the unemployment insurance is only admissible if the employer hires a replacement for the period of the leave.

13.7. Regulations under labour law related to unemployment

Dismissal protection

In principle, an employer can terminate an employment at any time without naming reasons, if the periods of notice for the termination of work contracts or the contractual dates for termination of the work contract required by law, the collective agreement or an individual employment contract are respected. If there is an important reason, e.g. unjustified absence from work, the employment contract can be terminated without a period of notice (dismissal). The periods of notice for employers required by law are longer for white-collar workers than for blue-collar workers.

The employer is obliged to inform the works council about every intended termination of a contract. The works council can make a statement within five working days and demand a consultation with the employer. If the works council explicitly does not agree to the termination, it can – if it is considered as socially unjustified – be disputed by the works council or the employee. Dismissals due to morally unjustified motives (e.g. because of the employee's involvement in the trade union) or discriminating dismissals can be disputed by the employee him/herself.

If at least 20 employees are made redundant in a company, employer and

works council can conclude an agreement to cushion the social impact those made redundant for operational reasons (social plan). If the employer is not prepared to conclude a works agreement in such a case, the works council may enforce it by means of a quasi-judicial authority under participation of the social partners.

Individual groups of employees enjoy special dismissal protection. These include members of the works council, pregnant women, mothers after giving birth, parents during parental leave or working part-time after birth (see Chapter 9: Family benefits), disabled persons as well as persons on military or alternative civilian service. In such cases the consent of the relevant authorities is necessary.

The Public Employment Service must be notified at least 30 days prior to the first notice of dismissal in the following cases: Dismissal

- of at least five employees in companies with over 20 and under 100 employees;
- of at least 5% of all employees in companies with 100 to 600 employees;
- of at least 30 employees in companies with over 600 employees;
- of at least 5 employees over the age of 50 years.

The Public Employment Service must immediately start consultation and work towards the possibility of employment in the same or in another company for the persons concerned.

Periods of notice for employers, in the case of an intended termination of a contract

Period	White-collar workers Enterprise tenure	Blue-collar workers Two weeks statutory period of notice. Extension or reduction is possible in the frame of collective agreements or individual employment contracts
6 weeks	under 2 years	
2 months	after 2 years	
3 months	after 5 years	
4 months	after 15 years	
5 months	after 25 years	

13.8. Entitlements upon termination of an employment contract

In the case of the termination of an employment contract employees have several entitlements under labour law against the employer: above all, severance pay (and since 2003 supplementary retirement income provision), compensation for unused leave, pro rata special bonus payments and dismissal indemnity.

Severance pay

Employees (not including civil servants) with employment contracts dating back to 2003 or earlier who chose not to change to the supplementary retirement income provision systems existing since 2003 are entitled to severance pay upon the termination of their employment contracts. They must have worked for the company for a certain minimum period and have been given a notice of termination by the employer, or retire after at least 10 years of employment. The level of the severance pay depends on the duration of the employment and amounts to between two and twelve month's salaries. The month's salary corresponds to one twelfth of the yearly pay including special bonus payments, regular overtime, bonuses etc.

Schemes of employer-based retirement income provision

As only a relatively small number of employees are, in fact, entitled to severance

pay upon termination of their employment contract, and as the element of a supplementary occupational pension system needed strengthening (second pillar), the system of severance pay was replaced by the new scheme of employer-based retirement income provision (Mitarbeitervorsorge) in 2002. Persons who began their employment before 2003 can choose between the old entitlement to severance pay and the new supplementary pension system. However, the change requires an agreement with the employer. As of 2003, employers have to pay a contribution of 1.53% of the wage/salary into one of the new retirement income provision funds. The contributions are collected by the relevant health insurance funds according to the legal provisions.

Upon termination of an employment contract – at the earliest after a total of three contribution years – employees are entitled to have the contributions paid out with interest, unless the employment contract was terminated by the employee through dismissal due to the fault of the employee or because the employee left prematurely. Other than in the frame of the old severance legislation, previous contributions are not lost in such cases, but can be asserted on termination of the next employment contract, e.g. due to dismissal by the employer. The amount accumulated can be left in the fund after the termination of an employment contract and be withdrawn e.g. only upon retirement. The money can also be transferred

Level of severance pay

After 3 working years	2 month's salaries
After 5 working years	3 month's salaries
After 10 working years	4 month's salaries
After 15 working years	6 month's salaries
After 20 working years	9 month's salaries
After 25 working years	12 month's salaries

to a private supplementary insurance fund or into a pension fund. The yield from this investment is exempted from tax on investment. The amount paid out is – like in the case of the severance pay – subject to a taxation of 6%. If the amount is paid out in form of a monthly pension, it is not taxable.

Financial compensation for unused leave

At the termination of an employment contract the employee is entitled to compensation for unused leave (usually pro rata). However, the financial compensation for unused leave usually delays a possible entitlement to unemployment benefits.

Pro rata special bonus payments

If the collective agreement or the employment contract provides for a 13th and 14th monthly salary, the employee is as a rule entitled to a pro rata bonus payment corresponding to the period for which pay was received. Almost all employees are entitled to this special bonus payment.

Compensation for redundancy

On certain pre-conditions (e.g. redundancy without due of termination by the employer), the employer is obliged to pay the employee all claims which would have arisen until the assumed correct termination of the employment contract (e.g. redundancy under consideration of proper notice of termination) in the form of a compensation for redundancy.

13.9. Entitlements under labour law in the case of sickness

If an employee can not pursue his/her work due to sickness or an accident he/she

is legally entitled to continued payment of wages by the employer for a certain period. The duration of continued payment of wages depends on the employee's number of working years in the company (the more years in the company, the longer the entitlement to continued payment of wages). After the termination of the full continued payment of wages the employee is entitled to half of this rate for another 4 weeks. The remaining 50% are covered by the statutory public health insurance in form of a sickness benefit. (see Chapter 8: Provisions in the case of sickness).

In the case of incapacity for work due to an accident at work or an occupational illness there is – regardless of the number of years in a company – a minimum entitlement to full continued payment of wages for a period of 8 weeks. For blue-collar workers this entitlement is raised to 10 weeks after the 16th year of service in a company; this entitlement exists also if continued payment of wages due to sickness has already been paid in the same year because of sickness.

Full continued payment of wages according to the enterprise tenure

up to 5 years	6 weeks
from 6 to 15 years	8 weeks
from 16 to 25 years	10 weeks
over 26 years	12 weeks

Care to sick family members

Employees and civil servants have a legal claim to paid leave from work, if they have to care for a sick family member (spouse or partner, children, adopted children and foster children, parents and grandparents) living in the same household. Within one year a total of one week of paid care leave can be claimed. In the case of sickness of a child under the age of 12

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years and living in the same household, a second week of care leave can be claimed.

However, the gross pay for the second week is refunded to the employer by the health insurance. If this entitlement to care leave has been exhausted, the employee may take a leave without the employer's consent in order to give care to a child. In that case the fact of taking a leave without the employer's consent does not constitute a reason for dismissal.

13.10. Integration of people with disabilities into Employment

In the frame of the Disability Employment Act (Behinderteneinstellungsgesetz) the goal of sustainable integration of disabled persons into employment is based on three pillars. First, the act provides for an obligation of employers to recruit people with disabilities, second, the employment contracts of people with disabilities are specially protected (a higher degree of protection against termination of employment) and third, the law allows for extensive funding for people with disabilities, and especially employers of people with disabilities.

The Disability Employment Act has introduced the term "preferred people with disabilities". Upon application, nationals of the EU or the EEA, whose degree of disability is at least 50%, can be included in this group if they are in principle available for work. The degree of disability is established in an abstract form related to the entire labour market on the basis of a medical opinion.

As the risk of losing their employment for people with disabilities is higher, and as it is more difficult for people with disabilities to find a new employment due to

a restricted mobility, "preferred people with disabilities" enjoy an increased dismissal protection.

To be legally valid, giving notice of termination to a disabled worker requires the approval of the authorities. In the proceedings for approval to terminate all relevant circumstances must be considered. The decision must be made on a case-by-case basis if the worker can more reasonably be expected to lose the job or if the employer can more reasonably be expected to continue employing the worker. The special dismissal protection begins six months after the disabled person's date of hire. This shall counteract any reluctance of employers to hire a disabled person because of the higher level of protection they enjoy. In practice about 80% of all proceedings for approval to termination (about 500 per year) end with a settlement between the parties. A typical settlement would be e.g. the further employment of the disabled person in another job within the company or making use of public subsidies.

All employers in the private and public sector in Austria, who employ more than 24 workers, are obliged to recruit at least 4% of their staff from among "preferred people with disabilities". Specially disadvantaged groups (e.g. blind persons, older persons with severe disabilities, persons who are wheelchair-bound) are taken into account twice.

If an employer does not fully comply or refuses to comply with his/her obligation to employ people with disabilities, he/she has to pay a fee to the Disabled Persons Compensation Fund (Ausgleichsfonds). This contribution is to compensate for the disadvantage that employers of people with disabilities may have (due to a potentially higher number of days away



from work and lower productivity). In 2005 the fee payable to the Compensation Fund amounted to Euro 201 per month and per place of work paid into this fund. This fund is managed by the Federal Ministry of Social Security, Generations and Consumer Protection and equipped with its own legal team. Money from this fund is purpose-oriented and used above all for direct benefits for people with disabilities and those who employ people with disabilities (mostly individual subventions).

At present, the tendency to comply with the obligation to employ people with disabilities is rising slightly; almost two thirds of the obligatory positions are filled with disabled persons. In 2003 compensation payments amounting to Euro 75 million were paid by employers who did not comply with the obligation to employ people with disabilities.

Per 31 December 2004 91,000 persons belonged to the group of “preferred people with disabilities”. In 2004 a total of 84,903 jobs required by law were to be filled by disabled by employers who were obliged to hire people with disabilities. Out of these, 53,010 were filled with “preferred people with disabilities” (= ca. 2% of all employees). 31,893 of these obligatory positions were not filled. In total, the rate of compliance for recruiting people with disabilities was 62%.

A new political approach for people with disabilities is the anti-discrimination-approach which is particularly defined in directive 2000/78/EC. The enforceability of claims by disabled persons on the right to be free from discrimination both in and beyond the labour market was resolved in 2005 and implemented in the Disability Equality Package (Behindertengleichstellungspaket) which takes effect in 2006. So, besides the existing legal provisions

and incentives there is now also a frame for claims under private law of individuals against their employer.

13.11. Equal treatment

The Equal Opportunities Act adopted in 1979 contains an extensive prohibition on discrimination due to sex with regard to employment. This ban extends also to forms of indirect discrimination such as the discrimination under labour law of part-time workers compared to full-time workers.

Since 1990 an ombudswoman for equal opportunity issues has acted as a central advisor for women working in the private sector, who feel discriminated against at work because of their sex. In the event of infringements of the Equal Opportunities Act, an application for examination of the discriminating action can be made to the equal opportunities commission. If the employer is not prepared to stop a discriminating practise discovered by the commission, legal action can be taken at the Labour and Social Court. The judicial enforcement of claims regarding to discrimination is also possible independent of proceedings before the equal opportunities commission.

In addition to the new laws following from the push for equal opportunities in the private sector, there has also been a call for more active support of opportunities for women in the public sector. The Federal Government as employer is thus obliged to actively promote equal opportunities for women. Women must be given preferential treatment for employment or promoted within the civil service ranks, particularly if the proportion of women in a certain area is below 40%.

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As of 1 July 2004 a new version of the Equal Opportunities Act came into effect. The new Equal Opportunities Act focuses above all at the implementation of the two Anti-Discrimination Directives laid down by the EC, namely the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Equal Treatment Framework Directive/Employment Equality Directive), prohibiting discrimination on grounds of sex, race/ethnic origin, religion/belief, disability, age and sexual orientation.

In the frame of the implementation of these above mentioned directives, the former Equal Opportunities Act was integrated in the Act on the Commission for Equal Treatment) (Bundesgesetz über die Gleichbehandlungskommission) and amended insofar as it now regulates the institutions (Equal Treatment Commission and Ombudsman/woman's Office for Equal Treatment) as well as the proceedings. The new Equal Opportunities Act incorporates the material provisions of the former Equal Opportunities Act and was extended by those directives resulting from the report on the implementation of the directives.

The Equal Opportunities Act bans discrimination on grounds of sex, race/ethnic origin, religion/belief, disability, age and sexual orientation in the following areas:

- Start of an employment,
- Determination of the remuneration,
- Granting of voluntary social benefits, which do not figure as pay,
- Measures of education and further education as well as retraining,
- Promotion possibilities,

- General working conditions
- Termination of the employment.

In the general labour market, the Equal Opportunities Act is applicable to the following situations:

- Access to vocational guidance, professional training, further education and retraining outside an employment,
- Involvement in an employers' organisation,
- Access to self-employment.

Further, nobody may suffer from direct or indirect discrimination due to his/her ethnic origin in the fields of:

- Social protection including social insurance and health insurance,
- Social benefits,
- Education,
- Access and entitlement to goods and services (including living space) available to the public.

The Equal Opportunities Act provides the following sanctions:

- Compensation of financial loss, i.e. positive damage and lost profit;
- The creation of a discrimination-free situation;
- And – in both cases – additional compensation of non-material damage for the injury against the person

Besides the ban on sexual harassment, already included in the former Equal Opportunity Act, also harassment related to gender as well as harassment according to one of the above mentioned facts of discrimination are considered to be discriminating actions.

The area of responsibility of the existing commission for equal treatment, which was formerly responsible for equal treatment between the sexes, has been extended to all discriminating facts mentioned above.



The commission is now composed of three divisions. The area of responsibilities of the ombudswoman/man for equal treatment, which covered counselling and support to persons, who feel discriminated against has been equally extended.

With the Federal Law Gazette I no 82/2005 the Directive 2000/78/EC - Equal Treatment Framework Directive/Employment Equality Directive for the area of disabled persons was adopted; the law will enter into force on 1 January 2006. By this, a protection for people with disabilities from discrimination on the labour market has been created similar to the above mentioned implementation of the directive in the frame of the Equal Opportunities Act. The implementation of this issue was performed individually (not together with the implementation of directives concerning other groups) because discrimination for people with disabilities does not only mean discrimination through actions or omissions, as with other groups in society. Often, existing environmental/physical barriers prevent participation in social life or

render participation significantly more difficult.

As the removal of these barriers – other than the omission of discrimination in the case of other particularly protected groups – usually causes expenses, an examination of feasibility within reasonable limits was established in the frame of the Disability Employment Act. According to the relevant provisions, discrimination by barriers is only considered as such, if the removal of these discriminating barriers would also be feasible.

A further addition (compared with the Equal Opportunities Act) is the introduction of a compulsory reconciliation process before the Federal Social Office (Bundessozialamt) in the case of damage claims, prior to enforcement by legal process. Objective of the reconciliation process is an amicable settlement. As an alternative means towards conflict management, mediation is offered free of charge in the frame of the proceedings.