



DECENT WORK CHECK

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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TABLE OF CONTENTS

INTRODUCTION	1
MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR.....	2
01/13 WORK & WAGES	3
02/13 COMPENSATION.....	7
03/13 ANNUAL LEAVE & HOLIDAYS	12
04/13 EMPLOYMENT SECURITY	15
05/13 FAMILY RESPONSIBILITIES.....	18
06/13 MATERNITY & WORK	22
07/13 HEALTH & SAFETY	26
08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT	29
09/13 SOCIAL SECURITY	33
10/13 FAIR TREATMENT	37
11/13 MINORS & YOUTH.....	40
12/13 FORCED LABOUR.....	42
13/13 TRADE UNION.....	44
QUESTIONNAIRE.....	48

INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

The text in this document was last updated in November 2023. For the most recent and updated text on Employment & Labour Legislation in Austria in German, please refer to: <https://lohnspiegel.org/Osterreich>

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Collective Labour Relations Act (Official Gazette No. 22/1974)
2. General Agreement on a Minimum Wage of 1,000 Euro, 2007
3. Minimum Wage rates for Social Services M 5/2005/XXII/96/3
4. Kollektivvertrag der Sozialwirtschaft Österreich 2014
5. White-Collar Employees Act (Official Gazette No. 292/1921)
6. Employment Contract Law– AVRAG (official gazette No.459/1993)
7. Working Time Act (Official Gazette No.461/1969)
8. Rest Periods Act (Official Gazette No. 144/1983)
9. Harmonization of Leave Law and Introduction of Care Leave Act (Annual Leave Act) (Official Gazette No. 390/1976)
10. Employment Contract Law Harmonization Act (Official Gazette No. 459/1993)
11. General Civil Code (Official Gazette No. 496/1811)
12. Trade Commerce and Industry Regulation Act (Official Gazette No. 227/1859)
13. Employees' Income Provision Act (Official Gazette No. 100/2002)
14. Maternity Protection Act 1979 (Official Gazette No. 221/1979)
15. Parental Leave for Fathers Act (Official Gazette No. 651/1989)
16. Child Care Benefit Act (Official Gazette No. 103/2001)
17. General Social Insurance Act (Official Gazette No. 189/1955)
18. Health and Safety at Work Act (Official Gazette No. 450/1994)
19. Labour Inspection Act (Official Gazette No. 27/1993)
20. Continued Remuneration Act (Official Gazette No. 399/1974)
21. General Retirement Income Act (Official Gazette No. 142/2004)
22. Unemployment Insurance Act (Official Gazette No. 609/1977)
23. Austrian Federal Constitution 1920
24. Equal Treatment Act (Official Gazette No. 66/2004)
25. Penal Code (Official Gazette No. 60/1974)
26. Employment of Children and Young Persons Act (Official Gazette No. 599/1987)
27. Aliens Police Act (Official Gazette No. 100/2005)
28. Labour Constitution Act (Official Gazette No. 22/1974)
29. Chamber of Labour Act (Official Gazette No. 626/1991)
30. Associations Act (Official Gazette No. 66/2002)

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01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Austria has ratified the Convention 95 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Collective Labour Relations Act (Official Gazette No. 22/1974)
- General Agreement on a Minimum Wage of 1,000 Euro, 2007
- Minimum Wage rates for Social Services M 5/2005/XXII/96/3
- Kollektivvertrag der Sozialwirtschaft Österreich 2014
- White-Collar Employees Act (Official Gazette No. 292/1921)
- Employment Contract Law– AVRAG (official gazette No.459/1993)

Minimum Wage

There is no statutory minimum wage in Austria as such since minimum wage is set by the collective agreements. The social partners in Austria (Trade Union Federation & Chambers of Commerce) signed an agreement in 2007 which stipulates that a minimum wage of €1,000 must be implemented in all collective agreements (applicable from January 2009). The amount of minimum wage in an agreement depends on the classification of work and length of employment of a worker (seniority).

As provided under the Collective Labour Relations Act, a minimum wage rate may be determined by a specialized body, i.e., the Federal Arbitration Board, for group of workers for whom a collective agreement cannot be agreed because nobody capable of negotiating a collective agreement exists on the side of the employer, and if an arrangement about minimum salaries and minimum amounts for compensating expenses has not been achieved by declaring a collective agreement statutory.

The Federal Arbitration Board is a permanent tripartite body affiliated with the Ministry of Economic Affairs and Employment. It may issue extension orders, making collective agreements applicable to sectors of the same nature which have not signed an agreement, at the written request of an employers' or workers' organisation provided that the collective agreement has prevailing importance in the relevant field of industrial relations, the working conditions in the extension order must be essentially the same as those in the collective agreement; and the working conditions covered in the extension must not be governed by another collective agreement.

If a trade union capable of negotiating collective agreements requests it, the Federal Arbitration Office must set a minimum wage rate after consulting the heads of provincial governments that will fall within the spatial scope. The Federal Arbitration Office fixes minimum wage for janitors, household help/domestic workers, private education, social services, home help and geriatric care, au-pair service and private child care.

(www.sozialministerium.at/site/Arbeit/Bundeseinigungsamt/Mindestlohnstarife/).

Even the statutory minimum wages fixed by the Federal Arbitration Office differs for each sector and there are also differences in minimum wage for different types of work within a sector. The minimum wage rate for social service workers used to distinguish seven different occupational groups under notification by Federal Arbitration Board. However, since 2007, the BAGS collective agreement covers the social service workers. The statutory minimum wages for different sectors are determined under sectoral agreements. Minimum wages may be determined for the whole country or

only for specific regions. The minimum wage rates set by Federal Arbitration Office for janitors and domestic workers vary for each region while in the other sector, similar rates prevail. The collective agreements can also require a nationwide or a region-specific application. Specific statutory minimum wage rates may be set for trainees in specific sectors. Collective agreements may foresee specific rates for trainees.

Workers are entitled to the minimum wage specified under the law, internal enterprise regulations or collective agreement. Any breach of the above referred minimum wage payable under law, regulation or collective agreement may result in administrative penalties. Depending on the number of employees concerned, and depending on repetition of the administrative offense, the fine ranges from €1,000 to €50,000. Depending on the violation of underpayment of wages and the amount of withheld remuneration, the fine can range between €20,000 to €400,000. If the employer fails to provide or submit wage documents (employment contracts, pay slips, working time records), a fine of up to €20,000 might be imposed.

Sources: §12(1), 18 & 22-26 of Collective Labour Relations Act (Official Gazette No. 22/1974); Grundsatzvereinbarung zum Mindestlohn von 1.000 Euro, 2007 (applicable from 01 January, 2009); Minimum Wage rates for Social Services M 5/2005/XXII/96/3; Kollektivvertrag der Sozialwirtschaft Österreich 2014; §3 of the Act on the Combating of Wage and Social Dumping, 2016

Regular Pay

Mandatory labor law provides that employees' salaries have to be paid at the latest on the last day of each calendar month. It is, however, permissible to agree to an earlier due date. The salary of blue-collar workers generally is due weekly. However, the due date can be subject to individual agreement between the employer and the blue-collar worker.

Under the Salaried Employees/White-Collar Workers Act (section 15), wages can be paid twice a month on the 15th and last day of the month. Payment at the end of month can also be arranged. The Anti-Wage and Social Dumping Act contains penalties for if minimum wages and salaries fall short and if documents relating to employment contracts are not available in German. A fine penalty of €1,000 to €10,000 is issued for every underpaid employee; €2,000 to €20,000 if more than three workers are underpaid; and €4,000 to €50,000 in cases of recurrence with more than three employees involved.

Certain Amendments have been made to the Act against Wage and Social Dumping (*Lohn- und Sozialdumpingbekämpfungsgesetz – LSDB-G*) by virtue of the act to adapt contractual employment law (*Arbeitsvertragsrechtsanpassungsgesetz - Avrag*) The fines which were imposed on the employers for underpayment or wage dumping were higher than the fine that was imposed where they did not keep documents relating to employment contracts, thereby resulting in non-compliant employers not keeping proof of the documents. This has been amended now and both the fines have been equated. (Section 7i (4)). The period of limitation

provided by statute under which workers are to make claims of underpayment has been extended from one year to three years, starting at the time of payment for each respective salary; the statutory period of limitation for administrative authorities to impose fines is five years (section 7i (7)). Employers who have previously underpaid their employees will go unpunished if they pay them the full amount due before any investigation begins (Section 7i (5)). No fines are imposed if the underpayment is minor and not due to the gross negligence of the employer provided that the full amount due has been paid by them to the workers. (Section 7i (6)). Secondly, In addition to fines, Authorities can prohibit companies from providing their services for a given time. Such prohibition can last a maximum of five years and can be increasingly imposed in cases where a company has been repeatedly fined for underpayment or failing to keep documents. (Section 7i (2), (2a) and (4)). The issuance of such a prohibition by the authorities can be avoided if a company can show that the necessary steps have been undertaken to avoid the commission of further offences after paying the earlier fines. ((section 7i (2)). Thirdly, the authorities can also require financial securities from the company during the course of investigation, if they have reasonable suspicion that offences have been committed and have reason to believe that the employer will hamper investigations (section 7l). Where temporary agencies are involved, the authorities might require the user of those agencies to pay the outstanding wages due to the agency to them instead as a financial security. (Section 7m (3)). Lastly, the law requires the employer to provide information for each posted worker through electronic means to the authorities. The information must include

details of the employer's type of business, the agreed working hours of the posted employee, and the location of the workplace. In the event such information is not provided, fines are imposed for each employee, not per employer (section 7b (3) and (4)).

In some cases, the Epidemics Act 1950 allows for compensation to the companies for remuneration paid if workers or companies are prevented from performing their economic activity due to official administrative measures on the basis of the Epidemics Act.

The entitlement to such compensation arises if a company is shut down by Government officials, or where an employee is quarantined based on an official order. In those cases, companies are required to continue paying remuneration to worker(s) but may claim compensation for such costs from the State. The time frame to request compensation, earlier six weeks, has been extended to three months during COVID under this new law passed by the Federal Assembly on 03 July 2020.

Sources: Anti-Wage and Social Dumping Act 2011; § 15 of White-Collar Employees Act (Official Gazette No. 292/1921); Employment Contract Law– AVRAG (official gazette No.459/1993)

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Austria has ratified the Convention 01 only.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Working Time Act (Official Gazette No.461/1969)
- Rest Periods Act (Official Gazette No. 144/1983)

Overtime Compensation

The normal working hours are eight hours a day and 40-hours a week. There are a number of exceptions (for example, flexible work time, other distribution of working hours implemented by a CBA or a works agreement (four-day-week, for example), etc. Normal daily working time of up to ten hours may be permitted by collective agreement. Plant-level agreements may permit a normal daily working time of up to ten hours if the entire weekly working time is regularly distributed across four days. In order to extend leisure time, working hours may be reduced on some days of the week and increased on remaining days. In the context of public holidays, where working hours are reduced even on working days to extend leisure time, the lost working hours are distributed across the working days in the next 13 consecutive weeks. The reference period of 13 weeks may be extended by collective agreement. Normal daily working time in such case may not exceed 10 hours (if reference period is 13 weeks) or 9 hours (if reference period is longer).

The normal working time of staff working at sales outlets under Shop Opening Hours Act 2003 may be extended to 44 hours in a single week within a four-week reference period if average weekly working time of 40-hours (or other limit set by collective agreement) is not exceeded. Normal daily working time in this case may not exceed 9 hours. A 60-hour limit applies where the

worker regularly performs a substantial amount of on-call work and when the higher limit is permitted by a collective agreement, a works council or the labour inspectorate.

Overtime work is permitted where there is an increased workload; where the worker cannot be replaced by another worker, for preparatory and complementary work in cleaning and maintenance work, when it cannot be performed during normal hours without interruption or disturbance or work on which the resumption or continuation of the work of the enterprise depends or work serving final customers or connected to necessary clearing-up work.

Working time may be extended beyond forty hours at times of greater demand by five hours of overtime in any single week and in addition by no more than sixty hours of overtime within any single calendar year. However, no more than ten hours of overtime are admissible within any single week. Daily working time may not exceed ten hours and weekly working time may not exceed 50 hours.

Amendments have been made to the average working time in hospitals where the average weekly working time shall not exceed 48 hours within a reference period of 17 weeks. An individual opt-out is not possible. The maximum weekly working time per week is 72 hours which has not been changed. However, within the next six years, a worker can be required to work more than 48 hours if they agree upon it, in which case the amendment allows a maximum average weekly working time of 60 hours until 31.12.2017 and then from that time onwards 55 hours respectively until 31 .12. 2020. Workers who do not consent to working more cannot be required to work more than 48 hours on

average. Prolonged shifts for doctors and pharmacists which are now possible up to 32 hours are to be reduced to 29 hours from 01.01.2018 and then from 2021 onwards to 25 hours.

Compensatory rest has to be granted immediately following the prolonged shift in order to ensure worker recreation, and the duration of the rest period is based on the extent the shift exceeds 13 hours, the minimum being 11 hours. (The Act on Working time in hospitals (Krankenanstalten-Arbeitszeitgesetz, KA-AZG), (86/BNR))

In order to ease obligations on the documentation of working time, the law (Working Time Act (Arbeitszeitgesetz-AZG) has been amended accordingly. There is no requirement for keeping additional records of rest time which have already been agreed upon within the collective or individual work agreement, unless the rest periods come outside the agreement (Section 26 (5)). The working time only needs to be recorded where it has deviated from the initial agreement (in which the working times had already been agreed upon) (Section 26 (5a)). Lastly, employees will be able to have access to free monthly records of their working time and the employer will be precluded from raising a time-lapse plea for claims by employees arising from those records where he/she has refused to hand them over to the employees (Section 26 (8) and (9)).

Maximum daily working hours are increased from ten to twelve hours for the travellers in case the employee has been asked to take a car to and from a worksite that is not his/her regular worksite. This extension does not apply to employees whose job is to drive (cabs, lorries, etc).

Workers who are involved in overtime are entitled to an overtime premium of 50% or compensation as time-off. If a worker is given time-off, an overtime premium is determined under a collective agreement when workers are given time-off for overtime work and may be paid separately. A collective agreement determines whether workers receive monetary premium or time-off for overtime work. In the absence of collective agreement, workers are entitled only to cash compensation.

The Working Time Act and the Rest Periods Act were amended in July 2018 and are applicable from September 2018. While the normal daily working hours are still 8, maximum daily working hours, inclusive of overtime, have been raised from 10 to 12 hours. The maximum weekly working time has also increased from 50 to 60 hours. The average working time over a 17-week period is capped at 48 hours.

Workers have the right to refuse extra overtime and such workers might not be discriminated against however workers must work overtime if it does not exceed 10 hours unless it interferes with other worker interests such as it results in a working day of no more than 10 hours, unless this would interfere with their overriding interests (eg, care responsibilities).

Sources: §2-10 of Working Time Act (Official Gazette No.461/1969)

Night Work Compensation

Night work is defined as the work performed between 20:00 and 05:00. Night worker is a worker who works regularly at night or, unless otherwise provided by a collective agreement, works at least 48 nights in any calendar year for at least three hours during night time.

If the average daily working hours of night workers exceed eight hours over a reference period of 26 weeks, workers are entitled to additional rest periods. After calculation, workers are entitled to additional rest of two-third of the sum total of hours above normal working hours. Similar provisions apply for workers involved in heavy night work.

Night workers are entitled to free health assessments before their assignment and thereafter at intervals of two years, after their 50th birthday or after having performed night work for ten years at intervals of one year. Night workers are entitled to being transferred to day work according to the available options if any further performance of night work constitutes a verifiable hazard to their health or for the duration of care responsibilities which are indispensable for children up to age of 12 years.

There is no provision for night work compensation or time-off for night workers.

Sources: §12a-d of Working Time Act (Official Gazette No.461/1969)

Compensatory Holidays / Rest Days

Workers can be engaged on certain tasks during the weekly rest periods and public holidays. The tasks are cleaning and maintenance work that cannot be undertaken during normal hours or be completed by 15:00 on Saturday; workplace security; the provision of food and drink to workers obliged to work; and the transport of workers obliged to work to and from the workplace.

In extraordinary circumstances, workers may perform work during the weekly rest

period that cannot be postponed where the reasons for the work were unforeseen and other measures cannot be taken. The weekend work can be performed where it is needed to prevent a direct danger to life or health; a state of emergency is in place; it is necessary to repair a fault, to prevent goods from deteriorating or to avoid some other disproportionate economic damage.

Only an indispensable number of workers may be deployed during weekly rest day and public holiday. Workers deployed on a weekly rest day are entitled to a rest period of 36 consecutive hours each calendar week in lieu of weekend rest. Such weekly rest includes one whole weekday.

Workers deployed during their weekly rest period are entitled to substitute rest in the following working week to be counted towards their weekly working time. Substitute rest is equivalent to the hours worked during any weekly rest period within 36 hours prior to the beginning of work in the next working week.

In the case of public holidays and workers who perform work on such days, workers are entitled to payment for their work in addition to their normal pay for that day, unless compensatory time-off has been agreed. The compensatory time-off must be equivalent to at least one calendar day or 36 hours. The premium pay for working on a public holiday is determined under a collective agreement.

Sources: §9-13 of Rest Periods Act (Official Gazette No. 144/1983)

Weekend / Public Holiday Work Compensation

Working on weekly rest days and public holidays is allowed under the law. In the event of working on weekly rest days, there is no provision for premium payment while in the case of working on public holidays; law allows a premium payment however its rate is set under a collective agreement.

Sources: §9 of Rest Periods Act (Official Gazette No. 144/1983)

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Austria has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Harmonization of Leave Law and Introduction of Care Leave Act (Annual Leave Act) (Official Gazette No. 390/1976)
- Rest Periods Act (Official Gazette No. 144/1983)
- Working Time Act (Official Gazette No.461/1969)

Paid Vacation / Annual Leave

Workers are entitled to 30 working days of annual leave (25 days for five-day week workers). The leave entitlement rises to 36 working days (06 weeks) after 25 years of service with the same employer (30 days for five-day week workers). It was proposed in 2015 to grant 06 weeks of annual leave for all the workers after 25 years of service (engagement in the labour market) irrespective of the fact whether they worked with the same employer or not. Employers however did not approve of the idea since it raises costs.

A worker is entitled to annual leave after first six months of work of the reference year in which worker intends to take the leave. After the second year of service, full annual leave may be taken at the start of year. Workers are entitled to their usual wage which they would receive if they would be working. The payment for entire duration of leave is made before commencement of annual leave.

The timing of annual leave is agreed between worker and the employer taking into account the business needs of employer and the rest opportunities available to the worker. Splitting of annual

leave is allowed provided that each part is at least six working days in duration.

Workers who carry out at least six hours of heavy night work are entitled to two extra days of annual leave where such work was performed 50-100 times a year; and to three extra days if such work was performed 100 times a year or more. Workers who perform heavy night work for 40-49 times per year are entitled to two extra days of annual leave where such work was performed 100 times or more during the current and previous year and three extra days where such work was performed 150 times or more. Workers are entitled to four extra days of annual leave after five years of heavy night work and to six extra days after 15 years of heavy night work.

Workers cannot receive compensation in lieu of annual leave except in the case of employment termination before exercise of the right to annual leave.

The section 4b of Chapter 2 of Federal Act governing annual leave and severance pay for workers in the construction sector has introduced addition leave for the shift workers. The workers who works in a three or two or rota system basis and work has increased to more than nine hours daily in this regards worker are entitled to one day additional leave on per eighth week.

Sources: §2-10a of Harmonization of Leave Law and Introduction of Care Leave Act (Annual Leave Act) (Official Gazette No. 390/1976)

Pay on Public Holidays

The public holidays in Austria are regulated under Work and Rest Periods Act. These are of both religious and memorial nature. The public holidays are New Year's Day (January

01), Epiphany (January 06), Easter Monday, National Holiday (May 01), Ascension Day, Whit Monday, Corpus Christi Day, Assumption Day (August 15), National Holiday (October 26), All Saints' Day (November 01), Immaculate Conception Day (December 08), Christmas (December 25) and Boxing Day (December 26).

For members of the Protestant Church, the Old Catholic and Protestant-Methodist Church, Good Friday is also a public holiday. Public holidays are counted towards weekly rest periods if they coincide with periods of weekly rest. Workers retain their entitlement to pay for hours of work lost due to any public holiday or substitute rest day.

Workers are entitled to the level of pay they would have received if hours of work were not lost due to public holidays or substitute rest day.

A 2019 amendment in the Rest Act ('Arbeitsruhegesetz', ARG) has abolished the Public holiday on Good Friday and introduced 'Personal Public Holiday' in which workers are entitled to take one day holiday from his/her annual leave of 25/30 days.

Sources: §7-9 of Rest Periods Act (Official Gazette No. 144/1983)

Weekly Rest Days

Workers are entitled to an uninterrupted weekly rest of at least 36 hours which has to include a Sunday. The weekly rest has to start at 13:00 for all workers and at 15:00 for cleaning, maintenance and repair workers.

An amendment to the law on working time in hospitals has led to changes in rules

regard the weekly rest period. Where the parties could previously reduce the weekly rest period of 36 hours by mutual agreement and in exchange for a compensatory rest period could be paid monetary compensation, this compensation has now been negated. (The Act on Working time in hospitals (Krankenanstalten-Arbeitszeitgesetz, KA-AZG), (86/BNR))

The Rest Periods Act was amended in July 2018 and changes are applicable from September 2018. Certain statutory exceptions to the weekly rest breaks are already applicable in health, transport and tourism sectors. Now exceptions to the statutory provisions can be agreed between employer and the works council in the form of a written plant agreement in all sectors. However, such restriction is limited to 4 weekends or public holidays per employee in a calendar year.

Sources: §3 of Rest Periods Act (Official Gazette No. 144/1983); §12(3) of Working Time Act (Official Gazette No.461/1969)

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Austria has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Employment Contract Law Harmonization Act (Official Gazette No. 459/1993)
- White-Collar Employees Act (Official Gazette No. 292/1921)
- General Civil Code (Official Gazette No. 496/1811)
- Trade Commerce and Industry Regulation Act (Official Gazette No. 227/1859)
- Employees' Income Provision Act (Official Gazette No. 100/2002)

Written Employment Particulars

Generally, there are no specific statutory requirements regarding the form of a contract of employment (except for the contracts with apprentices and some employees of the public sector). Therefore, an employment contract may either be in written or oral form. However, if employment contract is not concluded in written form, the employer is required to give the employee a written statement summarizing the most important terms of the employment contract, i.e., basic information about parties, the contract commencement date, the period of employment, notice period, termination date, salary, annual holidays, daily or weekly normal working hours, name and address of corporate pension fund, and termination terms.

Sources: §2 of Employment Contract Law Harmonization Act (Official Gazette No. 459/1993)

Fixed Term Contracts

The indefinite contracts are the norm however no restrictions are placed in law

for first fixed term contract. Law does not put any restrictions on maximum term of a single fixed term contract or its further renewals. However, successive fixed term contracts automatically result in contract of indefinite duration unless objective or material reasons can be shown to justify the need to renew a fixed term contract. No limit for fixed term contract is specified under the law. Thus, it can be inferred that the law allows hiring of fixed term contract workers for tasks of permanent nature.

Probation Period

The probationary period is fixed as one month for white collar workers. The probationary period for blue collar workers is governed by collective agreements. It is usually considered as one month.

Sources: §19 of White-Collar Employees Act (Official Gazette No. 292/1921)

Notice Requirement

The notice period which an employer has to respect before terminating an employee is typically in proportion to the length of employment (seniority principle), ranging from one day (casual workers) to five months. The notice period also depends on the status of workers (blue-collar worker or white-collar employee). Collective agreements also frequently establish notice periods which are more favourable to employees than the applicable statutes.

There are two types of dismissal: the ordinary and summary dismissal. An ordinary dismissal is subject to notice periods stipulated by White-Collar Employees Act (for white-collar workers), Commerce Regulations for Industrial Workers (for blue-collar workers) and Civil Code (blue-collar workers). The notice

The text in this document was last updated in November 2023. For the most recent and updated text on Employment & Labour Legislation in Austria in German, please refer to: <https://lohnspiegel.org/Osterreich>

period for white collar employees increases with seniority. The notice period is 6 weeks after at least 6 months of service; 2 months after 2 years of service; 3 months after 5 years of service; 4 months after 15 years; and 5 months after 25 years of service. For blue-collar workers, the notice period is 14 days in the absence of any other arrangement under section 77 of Trade Commerce and Industry Regulation Act from 1859 (GewO 1859). Under the Civil Code, the notice period is 14 days unless employee is paid on a daily basis or by piece rate in which case only one day's notice needs to be given. Higher notice periods are allowed in collective agreements.

For employees wishing to terminate an employment, they must give at least four weeks of notice after a service period of at least three months.

Sources: §20(2) of White-Collar Employees Act (Official Gazette No. 292/1921); §1159 & 1159(A&B) of General Civil Code (Official Gazette No. 496/1811; §77 of Trade Commerce and Industry Regulation Act (Official Gazette No. 227/1859)

Severance Pay

For employment contracts concluded before 01 January 2003, employees are entitled to mandatory severance pay on termination of their employment contract if the employment contract has lasted for three or more years.

The amount of severance pay depends on the length of employment. After three years of employment, employees are entitled to two months' salary; after five years of employment, they are entitled to three months' salary; after 10 years of employment to four; after 15 years of employment to six; after 20 years of

employment to nine; and after more than 25 years of employment, they are entitled to 12 months' salary. The assessment basis for severance pay includes not only the salary, but also a pro-rata portion of irregular payments, as well as the entire value of all in-kind compensation received by the employee. The above provisions apply to both individual and economic dismissals.

For employment contracts concluded after 01 January 2003, a new system is in place where employer pays 1.53% of each employee's gross salary to a special fund (Mitarbeitervorsorgekasse). On termination, the employee has the option to either have the accrued amounts paid out by this fund as severance pay (provided that the employee was employed for more than 3 years) or to leave the amounts in the fund, into which any new employer will continue to contribute monthly payments. No employer liability for severance payment arises upon termination of employment.

Severance payment is not due if the employee terminates the contract, prematurely resigns without cause or is dismissed for good reasons. The Construction Workers' Leave and Severance Pay Act also prohibits severance payment if the employment contract is terminated by agreement between the worker and the employer.

Sources: §23 of White-Collar Employees Act (Official Gazette No. 292/1921); §7 of The Employees' Income Provision Act (Official Gazette No. 100/2002); §13(c) of the Construction Workers' Leave and Severance Pay Act (Official Gazette No. 414/1972);

https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1972_414/ERV_1972_414.pdf

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

Austria has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Maternity Protection Act 1979 (Official Gazette No. 221/1979)
- Parental Leave for Fathers Act (Official Gazette No. 651/1989)
- Child Care Benefit Act (Official Gazette No. 103/2001)

Paternity Leave

A 2019 reform in the Austrian Paternity Leave Act (Väterkarenzgesetz, 'PLA') has granted one-month paternity leave on the birth of a child. This right is termed as 'Daddy Month' (Papa Monat). Before this amendment, only federal employees and some workers covered by respective collective bargaining agreement (CBA) had a right to so-called early fathers' leave

Law further specifies the circumstances in which father would have the right to the one month leave e.g. if the mother is not entitled to avail maternity leave so that the father would have to return to work no later than eight weeks after the child's birth. In order to avail paternity leave, the employee has to intimate employer three months before the birth of the child about his plan to take Daddy Month and the probable date of childbirth. The Daddy Month starts only after the childbirth and cannot start before a child is born.

Workers availing Daddy Month enjoy special protection from termination of employment and summary dismissal. The protection is available from 4 months before the predicted date of childbirth and lasts four weeks after the end of the Daddy Month.

Earlier there was no provision for paternity leave in the Austrian laws. However, from March 2017, Family Time Bonus Act (*Familienzeitbonusgesetz*) is applicable which provides new fathers with statutory paternity leave and benefits. The Act is applicable to natural and adoptive parents. The Act introduces a paternity leave of one month (28-31 days) referred to as "family time bonus". Paternity leave must be taken within 91 days of the childbirth.

The family time bonus is available to natural, adoptive, permanent nursing, and same sex fathers. Only those fathers are eligible who are employed, have valid health and pension insurance for at least 182 days prior to applying for the bonus are eligible. There is provision for a flat rate benefit of €23.91 per day.

Employer must agree to the worker's request for grant of "father's month".

Source:

<https://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1940282.html>;
Family Time Bonus Act 2016, applicable from March 2017; Austrian Paternity Leave Act

Parental Leave

Workers are entitled to parental leave until a child reaches the age of two years. The parental leave is not individual entitlement rather it is for the family. Leave may be taken by one parent only (mother or father) or by both parents on an alternating basis. The whole period can be divided into a maximum of three parts alternating between the parents, with each part at least two months in duration. Both parents cannot take leave at the same time except for one month after the first time they

alternate leave however parental leave ends one month earlier in that case.

Each parent also has the possibility to postpone three months of parental leave (thus 6 months in total) to avail it by child's seventh birthday (or school entry at a later date).

A childcare benefit is provided to all families who meet the eligibility requirements, as provided under the Child Care Benefit Act, whether or not the parents take parental leave. The benefit is paid for the maximum period of 36 months. However, parents can choose between five options of which four are flat rate and one is income related. The benefit is funded by the Family Burdens Equalization Fund (Familienlastenausgleichsfond-FLAF). The child care allowance program is merging the current four flat rate options into a plan that uses length of time to determine the amount of benefit ranging from €14.53 to €33.88 per day.

Parents that share parental leave are entitled to receive a “partnership bonus”. The amount of bonus is €500 per parent.

For adoptive parents, same regulations apply as for other parents.

In line with the §18b of the Act on the Adoption of Contractual Employment Law (Arbeitsvertragsrechtsanpassungsgesetz – AVRAG), if childcare facilities or schools are partially or fully closed due to COVID-19 related measures, certain employees may request additional paid leave of up to three weeks which is partially (earlier one-third, now half) funded by the government. The employee who can take this extra leave include those who take care of children under the age of 14 and/or persons with

special needs and whose work is not critical for the maintenance of the business.

Sources: §15(a-g) of Maternity Protection Act 1979 (Official Gazette No. 221/1979); §1-4 of Parental Leave for Fathers Act (Official Gazette No. 651/1989); §5 of Child Care Benefit Act (Official Gazette No. 103/2001)

Flexible Work Option for Parents / Work-Life Balance

Parents with children (born after July 01, 2004) are entitled to work part time until the child's seventh birthday (or school entry at a later date) if they are working in companies with more than 20 employees and if their employment with the current employer is at least three years. Earlier, there was no limit regarding reduction in working time for parents but now legislation is putting a cap on those entitlements: at least 20% of working time can be reduced on employee's request. The minimum working time that can be requested now is twelve hours per week. Though parties can agree on a working time arrangement beyond these limits, however, the employee cannot push for an arrangement beyond these limits in court. With this provision, the working time for parents may range from 12 to 32 hours per week.

Instead of reducing working hours, law also provides for flexible working (changing the total working hours within the day). Parents working in companies with less than 20 employees may enter into agreement to work part time until the child reaches the age of four years.

Parents are protected against dismissal until the child's fourth birthday. During the remaining period of part-time work (until a

child reaches seven years of age), protection against dismissal without grounds is provided.

In view of COVID, social partners in Austria have enabled an expanded short-time working scheme. Short-time working, essentially a reduction in working hours of a worker, is allowed in the context of temporary economic difficulties faced by an enterprise. This also leads to a reduction in wages which is however offset by both the short-time working benefit provided by the employer. Employers are later refunded the amount through the short-time work subsidy provided by the Arbeitsmarktservice (AMS).

In a reference period, initially three months, working hours can be reduced to an average of 10% – 90% of previous working hours. The short time working scheme must be approved by the AMS for grant of short-time working subsidy. The amount of subsidy is dependent on a worker's gross monthly pay. Workers receive 80% of the net pay if their gross monthly pay was over EUR 2,685 per month. The percentage of subsidy rises to 90% of net pay for those workers who earned less than EUR 1,700 per month prior to the start of short time working scheme.

Sources: §15(h-n) of Maternity Protection Act 1979 (Official Gazette No. 221/1979); §8 & 8(a-h) of Parental Leave for Fathers Act (Official Gazette No. 651/1989)

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Austria has ratified both the Conventions 103 and 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- General Social Insurance Act (Official Gazette No. 189/1955)
- Maternity Protection Act 1979 (Official Gazette No. 221/1979)

Free Medical Care

Maternity insurance as provided under the General Social Insurance Act comprises the period ranging from the beginning of pregnancy to delivery and any consequences of that child birth, as long as these consequences cannot be considered to fall under sickness insurance or invalidity insurance (due to prolonged sickness).

Assistance by a doctor, midwife or qualified pediatric or infant nurse as well medication and other aids to the degree stipulated under the above act is also covered. With regard to child birth, hospital care (in a hospital or maternity clinic) is covered for a maximum period of 10 days. If the condition of the mother or the distance to the house requires this, the transport cost (to and from hospital/care facility) is also covered.

Source: §157-161 of General Social Insurance Act (Official Gazette No. 189/1955)

No Harmful Work

The pregnant or breastfeeding employees must not perform heavy physical work or any work or working process that is harmful to their organism or that of the unborn child due to the kind of work process, agents (physical, chemical) or work equipment used. Employers are required to determine and assess the risks (and their effect) to the health and safety of pregnant and breastfeeding employees. The risk

assessment has to be commissioned to the occupational physicians, if necessary. Employer has to adapt working conditions to the needs of pregnant and breastfeeding employees by eliminating risks found in risk assessment.

If adjustment in working conditions is not possible, employer may transfer the worker to another job. If such transfer is also not possible, worker is released from work but is entitled to a wage that is equal to her average wage during the previous 13 weeks.

The Maternity Protection Act provides for an exhaustive list of works/work processes that are prohibited for pregnant workers and breastfeeding workers. Night work (between 20:00 and 06:00), overtime work (in excess of 09 hours a day and 40-hours day a week) and work on weekly rest days is prohibited for pregnant and breastfeeding workers.

The Act on Protection of Mothers was amended in view of COVID. It provides that a woman worker in the 14th week of pregnancy onwards should not work in close physical proximity with others and must not be engaged in work that requires physical contact with others. If such arrangement is not possible, she must be transferred to other part of the workplace or may be allowed to work from home. The remuneration cannot be reduced because the worker was engaged in other work or working from home. In case where no adequate measures can be taken for safety of pregnant worker and there is no option to work from home, such worker may be given paid leave. In such a case, employer may request reimbursement from the state for the paid remuneration. These measures were earlier applicable till 31 March 2021.

Sources: §2-8 & 14 of Maternity Protection Act 1979 (Official Gazette No. 221/1979); §3a of Act on Protection of Mothers

Maternity Leave

Maternity leave is regulated under the Maternity Protection Act. The general total duration of maternity leave is 16 weeks (eight-week prenatal and eight-week postnatal leave). It is applicable not only to the regular workers but also to the freelance pregnant workers/independent contractors. The eight-week prenatal leave is obligatory. Pregnant workers are not allowed to work during the eight weeks immediately prior to the presumed date of confinement. This period is determined on the basis of a medical certificate. If the confinement date occurs earlier or later, this period is shortened or extended accordingly. If the pre-natal leave is availed for shorter than eight weeks, the missing time may be added to the post-natal period however the post-natal leave in no case should exceed 16 weeks.

The usual post-natal leave period is 8 weeks however it can be extended to 12 weeks in the case of premature births, multiple births or caesarean births. Other than the eight-week prenatal leave, a pregnant woman worker may be given leave from work if she provides a certificate from a Labour Inspectorate doctor or a medical officer that her or her child's life and health are endangered if she continues to work. After the eight-week post-natal leave, a female worker may be given leave if she provides a certificate from a doctor certifying that she is unfit for work and then prescribing the duration of rest.

In line with the changes in the Maternity Protection Act in July 2019, periods of

maternity leave will be treated as years of service in full up for to 24 months for each child. Earlier, periods of maternity leave were only considered as periods of service for up to ten months maximum for the first child and were only taken into account for calculating notice periods, paid vacation and continued remuneration in the event of sick leave.

This legal change impacts the length of notice periods, remuneration during sick leave, and the length of paid vacation This legal amendment applies not only to mothers who gave birth but also to foster mothers and adoptive mothers.

Sources: §3 & 5 of Maternity Protection Act 1979 (Official Gazette No. 221/1979)

Income

Persons insured under the General Social Insurance Act qualify for daily maternity benefits. The daily maternity benefit is paid during maternity leave and any period when a pregnant worker is prohibited from work on the ground of her health protection. Workers are entitled to 100% of their average wages earned over the last 13 weeks before the start of maternity leave. Female workers remain entitled to other payment, especially the one-off payments.

Sources: §14 of Maternity Protection Act 1979 (Official Gazette No. 221/1979); §162 of General Social Insurance Act (Official Gazette No. 189/1955)

Protection from Dismissals

Workers may not be given notice of termination in a legally effective way during pregnancy and until the end of a period of four months after childbirth, unless the

employer has not been informed about the pregnancy or childbirth. The termination is also legally ineffective if the employer is notified of the pregnancy or childbirth within five working days after the notice of termination was given, or, if the information notice (about pregnancy) was given in writing, within five working days from the service of contract termination notice.

Employees may be dismissed in a legally effective way during pregnancy and until the end of a period of four months after childbirth only after the prior consent of the court have been obtained.

The court may grant its consent to the dismissal only if the employee has shown negligent behavior; committed a breach of trust or unjustifiably received and accepted benefits in her job from third parties without her employer's knowledge; disclosed a business or trade secret or has operated an ancillary business which is detrimental to her deployment in the business operation; and has been involved in violence against or substantial defamation of the employer or his family; and is guilty of committing an offence which can only be committed intentionally and is punishable by imprisonment for more than one year.

Women workers who had a miscarriage also get a special protection from dismissal for four weeks thereafter.

Employers are prohibited from giving termination notice in a legally effective way during pregnancy and until the end of a period of four months after childbirth, unless the employer has not been informed about the pregnancy or childbirth. Termination is also legally invalid if the employer is informed about the pregnancy

or childbirth within five working days of delivery of the notice of termination or, in the case of written termination, within five working days of its delivery. Protection from dismissal is also available for four weeks after an abortion.

Sources: §10, 12 & 15 of Maternity Protection Act 1979 (Official Gazette No. 221/1979)

Right to Return to Same Position

Right to return to same position is not expressly provided under the law however since protection from dismissals is guaranteed under the Maternity Protection Act, it can be safely inferred that workers have the right to return to same position.

Breastfeeding

Female workers are entitled to breastfeeding/nursing breaks to feed infant children. The break duration is 45 minutes for workers who work at least four and a half (4.5) hours during a day. If a worker works for eight or more hours during a day, she is entitled to two breaks, each of 45 minute duration. If there is no nursing facility at the workplace, a period of 90 minutes is granted for breastfeeding.

The breastfeeding/nursing breaks are paid breaks and an employee does not have to make up for these breaks for working longer hours nor these be deducted from other rest periods defined by law or a collective agreement. There must be appropriate rest facilities for pregnant and breastfeeding workers at the employer premises and construction sites.

Sources: §9 of Maternity Protection Act 1979 (Official Gazette No. 221/1979)

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Austria has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Health and Safety at Work Act (Official Gazette No. 450/1994)
- Labour Inspection Act (Official Gazette No. 27/1993)

Employer Cares

Employers are required to take necessary actions to protect the health and safety of workers in Austria in accordance with the provisions of the Health and Safety at Work Act. Workers have the right to the type of work and working environment which is safe and without risk to their health.

Employer has the duty to ensure health and safety of workers at work. Employers have to ensure the health and safety of worker by implementing measures including prevention of occupational risks; provision of information and training; and provision of necessary organization and means. Employers are required to undertake a risk assessment at the workplace; take necessary measures to avoid risks; reduce risks at the source of its occurrence; take technological advances into account; eliminating or reducing potential dangers; planning the prevention of risks; issue of suitable instructions to employees; and assess the risks that cannot be avoided.

Sources: §1-7 of the Health and Safety at Work Act (Official Gazette No. 450/1994)

Free Protection

Employers are required to follow the principle of giving collective safety measures priority over individual protective measures. Employers are obligated to provide workers with personal protective equipment and ensuring its use if the

means of collective protection are inadequate to ensure health and safety at work.

Personal protective equipment should be used only for the purposes and under conditions for which they are intended. A personal protective equipment should be intended for personal use only however if circumstances require its use by different workers, appropriate steps must be taken to avoid any health and hygiene problems for different users. Employers are required to ensure proper storage, cleaning, repair, maintenance, and replacement of personal protective equipment. Workers are also required to make appropriate use of personal protective equipment.

Employer is required to provide workers with protective equipment and protection of safety and health at work should not involve financial burden on workers.

Sources: §15, 17, 69-70 of the Health and Safety at Work Act (Official Gazette No. 450/1994)

Training

Health and Safety at Work Act requires employers to provide training to the workers on OSH related issues.

Training for safety and health at work forms an integral part of the induction of workers. Employers are required to train workers in safe and healthy working practices. An employer is under obligation to arrange for the employee to receive occupational health and safety instructions and training corresponding to the employee's position and occupation before an employee commences work or changes jobs. Such instruction or training is repeated if the

work equipment, operating procedures or technology is changed or upgraded. The training also needs to be repeated after accidents or events that nearly led to accidents to prevent future accidents.

Workers are also required to make appropriate use of training provided by the employer.

Sources: §14 of the Health and Safety at Work Act (Official Gazette No. 450/1994)

on all aspects of occupational safety and health. Labour Inspectorate must act as mediator between the employer and employee in case of conflict on OSH issues.

There is also Ombudsman of the Labour Inspectorate which is the central point of contact for complaints relating to the work of labour inspectorate.

Sources: Labour Inspection Act (Official Gazette No. 27/1993)

Labour Inspection System

Labour Inspectorate is the authority for monitoring employment conditions in Austria. It covers majority of employees except self-employed workers and private households, public educational institutions, workplaces under control of church or other religious institutions, and employees in forestry & agriculture. Labour Inspection covers home work.

The Labour Inspectorate ensures compliance with occupational safety and health laws, laws on working hours, protection of young and pregnant workers, and employment of vulnerable workers.

The labour inspection is governed by the Labour Inspection Act setting out the duties and powers of labour inspectors, together with organizational and procedural requirements for monitoring compliance. Labour Inspectorate does not inspect employment contracts, collective agreements, illegal employment and wage & social dumping. There are separate Labour Inspectorates for construction and agriculture workers. There are also 19 regional offices of Labour Inspectorate. Labour inspectors have the task of advising and supporting employers and employees

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Austria has ratified the Convention 102 only.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- General Social Insurance Act (Official Gazette No. 189/1955)
- White-Collar Employees Act (Official Gazette No. 292/1921)
- General Civil Code (Official Gazette No. 496/1811)
- Continued Remuneration Act (Official Gazette No. 399/1974)

Income

In case of illness or injury, employees are entitled to receive their full wages from employer for a specified period of time (six to twelve weeks) unless a worker became sick or injured intentionally or through gross negligence. The maximum period of compensation depends on the years of service with the employer and the cause of incapacity to work. In the case of occupational accidents, compensation is paid for a longer period.

The general duration of paid sick leave is 6 weeks; 8 weeks after 5 years of service; 10 weeks after 10 years of service; and 12 weeks after 25 years of service. During the first 6-12 weeks, workers are entitled to their full wages (100%) from the employer. Worker is entitled to further four weeks of sick leave during which he/she receives half of his normal salary (50%) from the employer. During these four weeks, worker is entitled to 50% of sickness benefits.

Once the period of sick leave is exhausted, sickness benefit (provided under the General Social Insurance Act) starts after a waiting period of three days. The basic provision for sickness benefit is 26 weeks, extendable to 52 weeks if the worker was

insured for a minimum of six months. Sickness benefit can be further extended to 78 weeks. The daily cash sickness benefit is calculated on the ground of a worker's most recent earnings up to a ceiling. The amount of sickness benefit is 50% of the earnings (until the 42nd day), rising to 60% from the 43rd day. The percentage of sickness benefit can also be increased if a person has spouse or other dependent family members. The increased benefit may not exceed 75% of the earnings.

Sources: §138-143 & 468 of General Social Insurance Act (Official Gazette No. 189/1955); §8-9 of White-Collar Employees Act (Official Gazette No. 292/1921); §1154-1158 of General Civil Code (Official Gazette No. 496/1811); Continued Remuneration Act (Official Gazette No. 399/1974)

Medical Care

Healthcare is available to anyone who has sickness insurance. Medical benefits include medical, mental health, maternity and dental care, hospitalization, medicine, appliances, home care, preventive examination, and transportation. There is provision for cost sharing. An insured person pays €5.30 for each prescription, part of the cost of dental care, 10% of the cost of care during first four weeks of hospitalization, and a minimum of €28.20 up to a maximum of 20% of the cost of appliances.

Sources: §4 & 144-151 of General Social Insurance Act (Official Gazette No. 189/1955)

Job Security

Employment of a worker is not secure even during these 16 weeks of paid sick leave as

an employee can be fired during the term of paid sick leave. However, their right to continued payment of remuneration is secure for remaining period of sick leave even if employment is terminated before expiry of 16 weeks of sick leave.

Sources: §138-143 & 468 of General Social Insurance Act (Official Gazette No. 189/1955); §8-9 of White-collar Employees Act (Official Gazette No. 292/1921); §1154-1158 of General Civil Code (Official Gazette No. 496/1811); Continued Remuneration Act (Official Gazette No. 399/1974)

Disability / Work Injury Benefit

Occupational accidents (injuries) and diseases are covered under the Social Insurance Act. Accidents to and from work are covered under the accident insurance. Employers are required to take preventive measures in order to protect workers against accidents at work and occupational diseases.

The temporary disability benefit is the same as cash sickness benefit and is paid until the insured worker is assessed with permanent disability. The permanent or partial disability pension depends on the assessment base which is an insured worker's average covered earnings in the last year before disability began.

In the case of permanent disability (where a worker has lost 100% of working capacity), 66.6% of the assessment base is paid. A proportionately reduced permanent disability benefit is paid with at least 20% reduction in earning capacity. The permanent partial disability benefit (referred to as supplementary benefit) is 20% of permanent disability benefit for loss of working capacity of 50-70%, and 50% of

the permanent disability benefit when loss in working capacity is greater than 70%. If the insured worker has at least 50% of the loss of working capacity, 10% of the total disability pension is paid for each child younger than age 18 (age 27 for students or no limit for disabled). The total disability pension, supplementary pension including family supplements cannot exceed 100% of the assessment base.

The spouse or registered partner of an insured person who dies as a result of occupational accident or disease is entitled to survivor's pension. The survivor pension is 40% of the assessment base if the spouse has reached the age of 60 years (65 years for widower) or is at least 50% incapacitated. If the above conditions are not fulfilled, spouse pension is 20% of the assessment base. Orphans up to the age of 18 years (age 27 for students or no limit for disabled) may receive 20% of the total disability pension while full orphans must receive 30% of the assessment base. Maximum pension for all beneficiaries cannot exceed 80% of the deceased person's pension calculation basis.

Funeral expense grant is also provided to the survivors if death is caused by an occupational accident or disease at work.

Austria had introduced a special accidental insurance regulation for work-from-home or home office workers in the social security legislation (ASVG and B-KUVG) as part of the 3rd COVID-19 Act. This special provision will continue to apply indefinitely instead of its application to 31 March 2021. Hence, the accidents in the home office will remain occupational accidents in the future. This also includes commuting accidents with regard to the satisfaction of vital needs in the vicinity of the home as well as the route

to and from home to school, day-care facilities and childcare facilities.

Sources: §172-220 of General Social Insurance Act (Official Gazette No. 189/1955)

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Austria has ratified the Convention 102 and 128 only.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- General Retirement Income Act (Official Gazette No. 142/2004)
- General Social Insurance Act (Official Gazette No. 189/1955)
- Unemployment Insurance Act (Official Gazette No. 609/1977)

Pension Rights

The general retirement (pensionable) age is 65 years for men and 60 years for women. The retirement age for women is transitioning from 60 to 65 years (from 2024 to 2033 for those born after 01 January 1964). Old age pensions are regulated under General Social Insurance Act, Pension Harmonization Act 2003 and General Retirement Income Act of 2004. Early retirement age is 63 years and 3 months for men and 58 years and 3 months for women. Early retirement is being eliminated by 2017. There is a provision for increased old age pension if the pension is claimed after completion of the standard retirement age.

A worker qualifies for old age pension if he/she has at least 180 months (15 years) of contributions, or 300 months of insurance cover, or 180 months (15 years) of insurance cover in the last 360 months (30 years).

The amount of old age pension depends on the assessment basis and on the insurance period. The current assessment base is average salary of the best 348 months (29 years) over an entire working career. The number of years in assessment base is also being increased to 40 years. Old age pension is 1.78% of the assessment base for each insurance year. In the case of early retirement, total pension is reduced by 4.2% for every year prior to the statutory

retirement age. The total reduction cannot exceed 15%. If a worker keeps working after statutory retirement age, pension is increased by 4.2% up to a maximum increase of 12.6%. There are special pension arrangements for miners.

Sources: §253 of General Social Insurance Act (Official Gazette No. 189/1955); General Retirement Income Act (Official Gazette No. 142/2004)

Dependents' / Survivors' Benefit

The survivors are entitled to a Survivors' pension if the deceased worker had met the conditions for disability pension or was already a pensioner (old age or disability) at the time of death. If the surviving spouse of a deceased insured person has reached the age of 35 or if the marriage has produced a child, widow(er) pension is claimed. Spouse is entitled to 0-60% of the deceased's pension depending on the ratio of the widow(er)'s income to the deceased's income. If the sum of survivor pension and own income of the survivor does not reach a certain level, an additional amount is paid.

Orphan's pension is available to the children up to age of 18 years (27 years for students and no age limit for disabled). Orphan's pension is 40% (60% for full orphan) of the pension the deceased received or would have been entitled to receive. A funeral expense grant is also provided in case of need.

Sources: General Social Insurance Act (Official Gazette No. 189/1955); General Retirement Income Act (Official Gazette No. 142/2004)

Unemployment Benefit

A person is entitled to unemployment benefit if he is covered by unemployment insurance for at least 52 weeks during the last 24 months or 26 weeks within the last 12 months if a worker is below the age of 25 years. It is also possible to claim unemployment assistance once the right to unemployment benefit has been exhausted and need exists.

The qualifying conditions, other than the insurance period, require that a person must be able and willing to work, be at the disposal of employment office and may not have exhausted the duration of unemployment benefit.

Unemployment benefit is based on the average earnings of the second last or last year up to ceiling. The basic amount of unemployment benefit is 55% of the daily net income (up to 80% in the case of family supplements). The duration of unemployment benefit depends on the period of insurance and a person's age. The basic entitlement is 20 weeks. However, it rises to 30 weeks if a person has been insured for three years in the last five years; 39 weeks for insurance of six years in the last ten years if a person is at least 40 years old; and 52 weeks for insurance of nine years in the last 15 years if a person is at least 50 years old.

The duration of unemployment benefit is extended by periods of participation in training provided by the Labour Market Service. Those who have completed a rehabilitation program receive unemployment benefit up to 78 weeks. Unemployment assistance, paid once unemployment benefits have been exhausted, is calculated as 92% (or in some

cases 95%) of the basic amount of unemployment benefit. Unemployment assistance is granted for an unlimited period of time, but only for one year at the time.

Source: Unemployment Insurance Act (Official Gazette No. 609/1977)

Invalidity Benefits

There is provision for invalidity benefits. The disability to work must be likely to last at least 6 months. The definition of invalidity varies according to skilled, semi-skilled or unskilled status. The skilled workers are covered by occupational protection arrangement, i.e., whether they can still perform an activity in their profession. On the other hand, unskilled workers can be assigned to any occupation on the labour market.

The incapacity for habitual occupation occurs when workers lose the half of the working capacity of a healthy person to engage in occupations for which they were trained or qualified. Total incapacity occurs when a manual worker is no longer able to earn at least half of the income which a healthy person would earn by performing a similar activity.

Invalidity occurs if insured persons aged 57 or more, as a result of illness, infirmity, loss of physical or mental capacity, are unable to pursue an activity in which they were engaged for at least 120 consecutive calendar months during the past 180 calendar months.

In order to qualify for invalidity pension, a certain minimum insurance period has to be completed, i.e., at least 60 months of insurance in the last 120 calendar months.

After the age of 50 years, the qualifying period and reference period are increased by one month and two months respectively with each month of age to a maximum of 180 months of insurance within the last 360 calendar months.

The qualifying period is not required if invalidity is caused by occupational accident/disease or if the invalidity occurs before a person reaches the age of 27 years if a person has insurance cover of at least 6 months. The amount of disability pension is calculated by the same formula as old-age pension.

Sources: General Social Insurance Act (Official Gazette No. 189/1955); General Retirement Income Act (Official Gazette No. 142/2004)

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

Austria has ratified the Conventions 100 and 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Austrian Federal Constitution 1920
- Equal Treatment Act (Official Gazette No. 66/2004)
- Penal Code (Official Gazette No. 60/1974)

Equal Pay

The Equal Treatment Act has provision on equal pay for all workers. The Act prohibits discrimination in all pay related matters on the ground of sex either directly or indirectly, in particular by reference to marital status or the fact whether a person has children. This applies to not only to the basic salary but also to other components of salary like lump-sum overtime pay, hardship allowance or voluntary company pension schemes.

In order to define pay criteria, company classification schemes and requirements of collective labour legislation have to comply with the principle of equal pay for equal work (and also of equal value) and may not set out separate criteria for the work of men and women which leads to discrimination.

Sources: §3(2) & 11 of Equal Treatment Act (Official Gazette No. 66/2004)

Sexual Harassment

Sexual harassment is defined as unwanted, inappropriate and displeasing conduct of a sexual nature committed with the purpose or effect of violating the person's dignity and creating, or with an intent to create, an intimidating, hostile or humiliating working environment or where the victim's reaction to such conduct by the employer or a supervisor is explicitly or implicitly made

the basis of a career decision (e.g. access to employment, professional training, promotion or remuneration).

Discrimination on the ground of sex occurs if a person is sexually harassed by employer; in the event of employer's failure to take appropriate remedial action if employee is harassed by a third party; if employee is harassed by a third party in the context of employment relationship; and if employee is harassed by a third party outside of employment relationship.

Instruction to sexually harass is also discrimination. It is also considered discrimination if a person is discriminated against due to his/her relationship with another person on ground of the sex of that respective person.

Apart from sexual harassment, the Act also forbids so called gender related harassment with regard to working climate generally hostile to both men and women workers. Employers are required to take necessary actions for prevention of harassment as well as sexual harassment at the workplace. In the event of harassment or gender related harassment, the victim is entitled to compensation for damage sustained both from the harasser and the employer. The harasser has to pay compensation not only for the financial loss but also for the personal injury suffered by the victim. The minimum amount of compensation is €1000.

In line with the amendment in the Criminal Code, sexual harassment is now categorized as criminal offence and includes acts committed against the will of the victim that have a negative impact on the victim's identity. Sexual harassment is

punishable with imprisonment for a term of up to six months or a fine of €360 per diem.

Sources: §6, 7 & 12(11) of Equal Treatment Act (Official Gazette No. 66/2004); §218 of Penal Code (Official Gazette No. 60/1974)

Non-Discrimination

The general principle of equality is enshrined in Article 2 of the Basic Law of the State 1867 (Staatsgrundgesetz-StGG) and in Article 7 of the Federal Constitution Act 1929 (Bundes-Verfassungsgesetz--B-VG). Art. 2 of Basic Law of States stipulate that "All citizens are equal before the law". Article 7 of Federal Constitution Act also provides that "All federal nationals are equal before the law. Privileges based upon birth, sex, estate, class, or religion is excluded. No one shall be discriminated against because of his disability. The Republic (federation, Laender and municipalities) commits itself to ensuring equal treatment of disabled and non-disabled persons in all spheres of everyday life". It is relevant to state here that constitutional equality clause cannot be enforced against private actors as it binds the state only.

In accordance with section 283 of Penal Code, whoever incites violence or behaves in a degrading manner with others on the ground of race, colour, language, religion or belief, nationality, descent or national or ethnic origin, sex, disability, age or sexual orientation is punished with up to two years imprisonment.

The prohibited grounds of discrimination as provided under the Equal Treatment Act are gender (included with it are marital and family status), ethnicity, religion or belief system, age, sexual orientation, and

physical & mental disability. The Act prohibits both direct and indirect discrimination. The above prohibition against discrimination applies to employment and working conditions, pay, conditions for access to employment, self-employment or occupation, such as selection criteria and recruitment conditions, granting of voluntary social benefits, vocational training, advanced vocational training and retraining, career advancement, in particular promotion as well as termination of employment.

Sources: §7 of Austrian Federal Constitution 1920; §1-29 of Equal Treatment Act (Official Gazette No. 66/2004); §283 of Penal Code (Official Gazette No. 60/1974)

Equal Choice of Profession

Women can work in the same professions as men. No restrictive provisions could be located in the law.

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Austria has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Employment of Children and Young Persons Act (Official Gazette No. 599/1987)

Minimum Age for Employment

The general minimum age for employment as declared while ratifying the Minimum Age Convention is 15 years (or until the end of compulsory education). Occasional light work is allowed from the age of 13 years.

Source: §1-7 of Employment of Children and Young Persons Act (Official Gazette No. 599/1987)

Minimum Age for Hazardous Work

Young workers are defined as the persons between the ages of 15 to 18 years. The minimum age for hazardous work is thus 18 years. The daily working time for young workers is eight hours; the weekly working hours should not exceed 40-hours, unless otherwise provided in the law. Nine hours are allowed in case where the 40-hour weekly limit is averaged over a period of longer than a week; or where the 40-hour weekly limit is divided unevenly over individual days if it results in a longer period of weekly rest.

If urgent business reasons require it, the daily working hours of a young worker of over 16 years may be extended by half an hour for preparatory and closing-off work, by up to three hours per week in the following cases: cleaning and maintenance work which has to be performed without interruption or disturbance during regular hours; work on which the continuation of the entire business depends; and serving final customers and related clearing-up

duties. For overtime, young workers are paid an overtime premium of 50% over normal hourly rate.

In addition to financial compensation, young workers must also be compensated by a later start or earlier end of another work period in the same week or at the latest in the following week. Young workers may not be involved in night work (between 20:00 and 06:00), except in certain industries (restaurants; shift work; entertainment (film, television, and radio recording); bakeries and hospitals). In these cases, they must have a medical examination before they start night work and subsequently on an annual basis.

Employer is required to take all necessary measures to protect safety, health and morals of young workers. Youth employment in certain hazardous activities is prohibited under a regulation. Labour inspectors can also prohibit employment of young persons in dangerous work.

Source: §1, 12, 14, 17 & 23 of Employment of Children and Young Persons Act (Official Gazette No. 599/1987)

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Austria has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Penal Code (Official Gazette No. 60/1974)
- Aliens Police Act (Official Gazette No. 100/2005)

Prohibition on Forced and Compulsory Labour

Forced and compulsory labour is prohibited under the law. Section 104 of the Austrian Penal Code makes slavery or similar practices a criminal offence, and prohibits trafficking for both sexual exploitation and forced labour. Traffickers are prosecuted under sections 104(a) and 217 of the Penal Code as well as section 114 -116 of the Aliens' Police Act to prosecute traffickers and those exploiting strangers.

Sources: §104, 104(a) and 217 of Penal Code (Official Gazette No. 60/1974); §114-116 of Aliens Police Act (Official Gazette No. 100/2005)

Freedom to Change Jobs and Right to Quit

Law allows workers to terminate employment after serving required notice. For employees wishing to terminate an employment contract, they must give at least four weeks of notice after a service period of at least three months.

For more information on this, please refer to the section on employment security.

Inhumane Working Conditions

Working time may be extended beyond forty hours at times of greater demand by

five hours of overtime in any single week and in addition by no more than sixty hours of overtime within any single calendar year. However, no more than ten hours of overtime are admissible within any single week. Daily working time may not exceed ten hours and weekly working time may not exceed 50 hours.

For more information on this, please refer to the section on compensation.

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Austria has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Austrian Federal Constitution 1920
- Labour Constitution Act (Official Gazette No. 22/1974)
- Chamber of Labour Act (Official Gazette No. 626/1991)
- Associations Act (Official Gazette No. 66/2002)

Freedom to Join and Form a Union

Austrian Federal Constitution and other basic legislation guarantee the right to form associations including trade unions and employers' federations. In accordance with article 12 of the Constitution, "citizens have the right of peaceful assembly and freedom of association. The exercise of these rights is regulated by a special statute. Another statute passed in 1918 provides for complete freedom of assembly and associations. The above provisions apply to voluntary long-term associations of persons to achieve non-profit aims through continued activity.

Worker's representation is regulated by the Chamber of Labour Act. Civil servants and agriculture employees are barred from membership in the Chamber however agriculture workers have their own Chamber. The Act on Associations has various provisions concerning associations/unions' right to organize their activities freely. Employee representation in enterprises is regulated by the Labour Constitution Act.

Source: Labour Constitution Act (Official Gazette No. 22/1974); Chamber of Labour Act (Official Gazette No. 626/1991); Associations Act (Official Gazette No. 66/2002)

Freedom of Collective Bargaining

The right to collective bargaining is regulated under Labour Constitution Act. The capacity to conclude collective agreements is regulated under sections 4-7 of Labour Constitution Act. The statutory bodies (chambers) and voluntary associations of workers have the capacity to conclude collective bargaining agreements. The voluntary associations are allowed to bargain collectively by official decision of the Federal Arbitration Office once they have fulfilled certain requirements. When a voluntary association concludes a collective agreement, this takes precedence over the statutory representative bodies. The trade unions and economic chambers usually conclude collective agreements at the sectoral level. In addition to the collective agreements, work councils while representing all employees in a workplace, regardless of union membership, have the power to conclude work agreements. Work agreements regulate the matters which can be governed only by enterprise level agreements.

By law collective agreements cover all the employees of the employers, who belong to the signatory organisations, whether or not the employees are members of the signatory unions.

Each collective agreement is effective immediately after its conclusion by the contracting bodies of the employees involved in collective agreements for workers in agriculture and forestry. The agreement must be signed by the contracting parties and submitted to the Federal Ministry of Social Affairs, together with the addresses of the contracting parties.

If the collective agreement does not contain any provision on its validity, it may be terminated by any contracting party after a period of at least three months from the end of a calendar month. The notice of termination is legally valid in written form and has to be made by registered letter. The termination must be notified to the Federal Ministry of Social Affairs within three days after the end of the notice period by the party who made the denunciation.

There is Advisory Council of Economic and Social Affairs in Austria. The Council is established on informal agreement between four social partner organizations. The Council produces position papers on actual economic and social policy issues. The council consists of 25 members: 16 members from worker and employer organizations; 5 independent experts and; 2 Secretaries General and their deputies. The four representative organizations are Economic Chamber of Austria (WKÖ), the Agricultural Chamber of Austria (LKÖ), Federal Chamber of Labour (BAK) and the Austrian Trade Union Federation (OGB).

The social partners in Austria have concluded a General Collective Bargaining Agreement on Covid-19 Testing, covering all such enterprises which are members of the Economic Chamber. The CBA contains regulations on the following three issues. First, where workers are required to present a negative COVID test for access to the workplace, the time to undergo test will be treated as working time; Second, enterprises shall not discriminate against a worker on the ground that they have taken a SARS- CoV-2 or because their test result is positive; and Third, allowing 10 minute breaks for taking off the masks in safe environment after every three hours to these workers who are required to wear a mask when working due to laws or

regulations in connection with SARS-CoV-2. These breaks shall be treated as paid breaks.

Source: Labour Constitution Act (Official Gazette No. 22/1974); <http://www.sozialpartner.at/>

Right to Strike

The Austrian legislature has refrained from defining the term "strike". Only the right to freedom of association is provided under the Constitution (article 12) and the legal guarantee in terms of strike action does not go beyond establishing an obligation on the part of the state to not interfere in industrial conflicts. The above constitutional provision guarantees the freedom to strike but does not provide for the right to strike.

Collective agreements usually have a peace obligation clause requiring parties to avoid any form of industrial action while a collective agreement is in force.

While the right to strike is not explicitly afforded, there are laws which prohibit the labour market authority from offering job placements to employers where strikes are being held; temporary hiring of workers to companies where strike are being held; and prohibiting the payment of unemployment benefits to striking employees whose unemployment is due to an on-going strike.

The labour law in Austria prohibits strikes for renegotiating a collective agreement; political strikes; strikes used to coerce employers to conclude a works agreement that could be mediated by a labour tribunal; and works council members from initiating strikes in this capacity.

The Austrian law also permits the wildcat strikes, strikes by the civil servants and the strikes that are not a last resort in an industrial dispute.

QUESTIONNAIRE

The text in this document was last updated in November 2023. For the most recent and updated text on Employment & Labour Legislation in Austria in German, please refer to: <https://lohnspiegel.org/Osterreich>

DECENTWORKCHECK.ORG

Check

Decent Work Check Austria is a product of WageIndicator.org and
www.lohnspiegel.org/osterreich

National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |

07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |

08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |

09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |

* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth	😊	<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste	😊	<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status	😊	<input type="checkbox"/>	<input type="checkbox"/>
Age	😊	<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS	😊	<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities	😞	<input type="checkbox"/>	<input type="checkbox"/>
Language	😊	<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)	😊	<input type="checkbox"/>	<input type="checkbox"/>
Marital Status	😊	<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance	😞	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity	😞	<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession	😊	<input type="checkbox"/>	<input type="checkbox"/>

11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden	😊	<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work	😊	<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice	😊	<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour	😊	<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week	😊	<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination	😞	<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Austria scored 44 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.