

New regulations for (cross-border) work assignments in Austria

The Austrian Act on Combating Wage and Social Dumping (*Lohn- und Sozialdumpingbekämpfungsgesetz*) establishes the framework conditions for the cross-border posting and assignment of employees to Austria (e.g. reporting obligations vis-à-vis public authorities, the retention of wage records, etc.). It also ensures compliance with the rules and regulations entitling employees to a minimum wage, including within Austria. Infringements are punishable by fines, which are among the highest that can be imposed under labour law.

In recent years, the Act on Combating Wage and Social Dumping has come in for heavy criticism. As the penalty provisions hitherto in force were ruled to be contrary to EU law by the ECJ (C-64/18) and because the Posting of Workers Directive was amended, an amendment applicable to postings and assignments commencing after 31 August 2021 has now been adopted.

Application of Austrian labour law

Up until now, only the regulations governing minimum wage, working hours, and holiday entitlement had to be complied with during an assignment in Austria. In the case of longer-term postings and assignments, all provisions applicable under Austrian labour law – including those in a collective agreement – will in future have to be complied with after one year. Any labour law provisions in force in a relevant foreign country that are more favourable remain unaffected. Only the provisions of the Corporate Employee and Self-Employed Persons Pension Act and those relating to the company pension and non-competition clauses remain inapplicable. An extension to 18

months is possible where there are grounds justifying this.

In addition, employees have a mandatory claim to at least the reimbursement of travel, accommodation or subsistence expenses that are payable at the place of work to comparable employees of comparable employers.

Changes to administrative penalty provisions

To date, it has been possible to impose penalties for violations of the Act on Combating Wage and Social Dumping for each employee affected. Compound penalties now no longer apply. Instead, new penalty levels were created without a minimum penalty.

For example, a failure to report postings and assignments or to keep available the reporting form or the A1 social security form may in future result in the imposition of fines of up to EUR 20,000 (previously the fine was between EUR 1,000 and EUR 10,000 per employee). In addition, it is no longer a criminal offence under the Act on Combating Wage and Social Dumping to select an incorrect declaration form by mistake. The same penalties also apply to employers that fail to keep wage records available at the workplace (the fine used to be as much as EUR 20,000 per employee under certain circumstances).

The biggest reform concerns employers underpaying their employees, i.e. wage dumping. An employer is deemed to have committed the criminal offence of underpaying its employees if the minimum remuneration (salary, overtime pay, special payments, etc.) provided for by statute, regulations or a collective agreement is not paid in full. The fine previously ranged from EUR 1,000 to EUR 10,000 per employee if up to three people were affected and from EUR 2,000 to EUR

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20,000 per employee if more than three employees were affected. Instead, there are now five levels with various maximum penalties, ranging from EUR 20,000 to EUR 400,000. Employers with up to nine employees can be fined up to EUR 20,000 if the total remuneration withheld is less than EUR 20,000. If the total exceeds EUR 50,000, the fine can be as much as EUR 100,000. If the total exceeds EUR 100,000, the fine can be as much as EUR 250,000. However, if the total exceeds EUR 100,000 and if the employer intentionally withheld more than 40% of the remuneration on average, a fine of up to EUR 400,000 can be imposed. For the first time, the reasons why and the extent to which employees have been underpaid are now explicitly taken into account.

The limited scope of the Act on Combating Wage and Social Dumping

The scope of the Act on Combating Wage and Social Dumping was adapted to bring it into line with that of the Posting of Workers Directive and is therefore limited. Before the Act was amended, a posting did not require the existence of a service contract. Postings were therefore covered even if there was no customer in Austria. Since the amendment entered into force, it has been necessary for there to be a service contract between a foreign employer and the recipient of services operating in Austria.

In addition, the scope of the Act on Combating Wage and Social Dumping was limited, primarily by the inclusion of further exceptions. The most important changes are as follows:

- The Act on Combating Wage and Social Dumping is not applicable to the delivery of goods by posted workers employed by the seller or lessor, to the collection of goods by posted workers employed by the buyer or

lessee, or to activities that are essential for the commissioning and use of delivered goods and performed by posted workers employed by the seller or lessor that require little investment of time.

- The exception for employees with high earnings has been extended and now also applies outside a group of companies. The pay threshold, which has also been reduced, is now 120% of thirty times the maximum daily contribution basis. Therefore, the posting of employees earning EUR 6,600 or more (gross) is not subject to the Act on Combating Wage and Social Dumping in 2021.
- The exceptions for group postings were also expanded. Specialist staff may now be posted for no more than two months per calendar year for the following purposes without having to comply with the Act on Combating Wage and Social Dumping: The delivery, commissioning (and related training sessions), maintenance, servicing and repair of machinery, equipment and IT systems.

Administrative simplifications

Under the new legal framework, all wage records as well as social security certificates can in future be kept available not only in German but also in English. Translations do not need to be certified.

A simplified procedure for keeping wage records available is provided for in the case of postings lasting no longer than 48 hours and involving non-mobile employees. During the period in which the employee is posted, only the contract of employment and work records must be kept or made available to the control bodies in electronic form. There is no longer any obligation to keep available proof of wage payments, documents verifying classification in the collective agreement, etc. However, other wage records may be requested



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by the control bodies. For calculation purposes, the period during which the position was filled by another posted employee must be taken into account.

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