LABOUR LAW AT YOUR FINGERTIPS

IMPORTANT REGULATIONS FROM LABOUR AND SOCIAL LAW

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"We want jobs that people can actually live off.

LABOUR LAW AT YOUR FINGERTIPS

IMPORTANT REGULATIONS
FROM LABOUR AND SOCIAL LAW

What is an employment contract?
How many vacation days do I have?
And how can employment relationships end?
In this guide you will find information on important topics and regulations related to your employment relationship.

This guide provides a general introduction to matters relating to private law employment relationships. Special laws or collective agreements – including for example in the area of public service law – may contain alternative regulations that are not taken into account here.

Contents

What is an employment contract?

Employment contract
Here you can read about the defining features of an employment contract (Arbeitsvertrag).

Statement of terms and conditions of employment
Your service record (Dienstzettel) is particularly important because you have no legal right to demand a written employment contract.

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YOU CAN FIND OUT HERE
WHAT HAS TO BE WRITTEN IN YOUR
EMPLOYMENT CONTRACT AND SERVICE RECORD.

Employment contract

When you enter into an employment contract, you agree to perform specific work for your employer. And your employer commits to compensating you financially for doing so.

The employment contract is a binding bilateral agreement. In other words, both sides have certain rights and obligations. And it is these rights and obligations that are being regulated in the employment contract. Specifically, it contains all of the points that are not already required by law or otherwise covered by the collective agreement or a company agreement.

Important features of the employment contract

- **Personal obligation to work**

- **Personal dependence**
  This means that employees are integrated into the company's organisational set-up with regard to working time, place of work and working processes, and are bound by instructions.

- **Time commitment**
  This involves performing work for your employer for a given amount of time and without any specific guarantee of success.

- **Equipment**
  The equipment must be provided by the employer to do your job.

Not all of these requirements have to be met in every instance. The decisive factor is whether these features predominate.

One example of an important feature of an employment contract is personal dependence.
The actual name used to refer to the contract is not important.

Form of the employment contract

The employment contract does not need to fulfill any formal regulations. It can be concluded in writing or orally. As an employee, you do not have the right to demand a written employment contract. However, a statement of terms and conditions of employment is required by law.

In practice, employers will usually draft an employment contract which you will be expected to sign. Make sure that you read your employment contract very carefully. It is important that you understand all the provisions it contains. Only sign the contract if you agree with everything in it.

Agreements on repayment of training costs, and non-compete clauses are permitted. Do not agree to such arrangements if you do not want them.

Statement of terms and conditions of employment

Your service record lists all the key rights and obligations set out in your employment contract. Your employer is obliged to issue a statement of terms and conditions. It is particularly important, given that employees do not have a legal right to receive a written employment contract.

Your statement of terms and conditions provides evidence of your employment.

It must contain the following information:

- Name and address of the employer
- Name and address of the employee
- Start of the employment relationship
- In the case of employment relationships concluded for a specific period of time (i.e. fixed-term contracts):
  the end of the employment relationship
- The date of termination and the length of the notice period
- Usual place of work or duty station and, if necessary, reference to changing places of work or places of assignment
- Any grading as part of a general overview
- Intended use
- The basic salary or wage, other components of remuneration such as special payments, when remuneration is to be paid, and so on
- Amount of annual leave
- Agreed normal daily or weekly working time (unless the employment relationship is covered by the Hausbesorgergesetz [Caretakers' Act])
- Collective legislative regulations that apply to the employment contract (collective agreement, statutes, minimum wage tariff, fixed apprenticeship remuneration, company agreement). Information on where such regulations can be inspected at the company
- Name and address of the employee benefit fund (betriebliche Vorsorgekasse) for the employee.
  Or: name and address of the construction workers' annual leave and severance pay scheme if you are subject to the Bauarbeiter-Urlaubs- und Abfertigungsgesetz (Construction Workers Leave and Severance Pay Act)

Your employer must notify you in writing within one month at the latest if any of the information on the statement of terms and conditions changes.

Make sure that your statement of terms and conditions contains all verbal agreements.
Does it contain errors, for example the salary that is lower than the one your agreed verbally? If so, send your employer a registered letter asking for the information to be corrected. This shows that you formally disagree with certain aspects of your statement of terms and conditions.

What can I do if I did not receive a statement of terms and condition?
Send a registered letter to your employer requesting that they issue you with a service record within a certain period of time. If they do not comply with your request, you can file a complaint with the Labour and Social Security Court (Arbeits- und Sozialgericht).

In principle, your employer does not have to issue a statement of terms and conditions if

- you have an employment contract that contains all of the details that are included in your statement of terms and conditions, or
- your employment relationship lasts no more than one month.

In such cases you have no legal right to demand a file a lawsuit

Wage or salary: what is important?

Is there a statutory minimum wage in Austria?
No. Which is why the collective agreements negotiated by the various unions are so important.

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AN OVERVIEW OF HOW WAGES AND SALARIES ARE REGULATED.

Is there a statutory minimum wage in Austria?

No. But even so, most employment relationships are governed by a collective agreement or minimum wage agreement that sets out a minimum wage or salary.

Which collective agreement is applicable depends on the industry you work in. An example: if you work as an accountant in a commercial enterprise, the collective agreement for commercial employees will apply. But if you work as an accountant in a hotel, then your employment relationship will be covered by the collective agreement for employees in the hotel and restaurant industry.

Therefore, one and the same activity can be subject to a different minimum wage.

How do I find out which collective agreement applies?

When you start your employment relationship, you must receive a statement of terms and conditions or written employment contract. This must indicate which collective agreement applies and confirm your basic salary.
The employer must ensure that the applicable collective agreement is available for inspection at the workplace.

Are periods of prior service credited?

This depends on the collective agreement. But in principle, you do not have any legal right to have periods of prior service taken into account.

What happens if my employment relationship is not covered by a collective agreement or minimum wage agreement?

As there is no statutory minimum wage, whatever you have agreed with your employer applies. But make sure that you record the amount agreed in writing! In the event of a dispute, this is the only way you will be able to prove what wage or salary was agreed.

You haven't agreed anything with your employer regarding your wage or salary? In such cases, you must receive remuneration that is "reasonable and customary" for your particular profession. But bear in mind that determining what is "reasonable and customary" can be very difficult in practice. Therefore it is very important to get your wage agreement in writing.

You will only receive special additional payments such as holiday and Christmas allowances (Urlaubs- und Weihnachtsgeld) if they are provided for in the applicable collective agreement or otherwise agreed in the employment contract. There is no legal entitlement to holiday and Christmas allowances by law.

Will I receive an annual wage or salary increase?

There are no statutory entitlement to wage increases by law. You will only receive wage increases if they are provided for in the collective agreement or agreed in the employment contract.

How are working time and breaks regulated?

Working time
Key information about standard working hours, overtime, extra hours and breaks.

Part-time work and marginal employment
What constitutes part-time work and what is the income limit for marginal employment.

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HERE YOU FIND OUT HOW LONG YOU HAVE TO WORK AND WHAT YOU ARE ENTITLED TO IF YOU WORK EXTRA HOURS OR OVERTIME.

Working time

The Arbeitszeitgesetz (Working Hours Act) regulates the maximum number of hours you can work as well as how much you must be paid for working overtime or extra hours.

Standard working hours

The Working Hours Act assumes a standard working hours of eight hours per day and 40 hours per week. Many collective agreements, however, provide for reduced standard working hours, e.g. 38.5 hours per week.

Distribution of weekly working time across individual working days
The law assumes five days of eight hours each. But there are many exceptions. For example, a normal daily working time of nine hours is permitted if this results in an extended weekend or end-of-week break, e.g. a short Friday. A normal working week of more than 40 hours is also a possibility within frameworks such as flexitime agreements.

Agreement on specific scheduling of working time
You agree the specific scheduling of your working time with your employer. So your schedule for a 40-hour week could look like this:

Monday to Friday: 8am to 4.30pm or
Monday to Thursday: 8am to 5.30pm and
Friday 8am to 12 noon

Make sure to agree your working time schedule with your employer in writing.

Breaks

If you work more than six hours a day, you are entitled to an unpaid break of half an hour. If necessary, in the interest of the employee or for operational reasons, this can be split into two breaks of 15 minutes each, or three breaks of ten minutes each.
As a rule, breaks do not count as working time as you do not receive any remuneration for them.

Intended for the protection of workers, they must involve a genuine break from work. As a result, you are not permitted to work from 8am to 4pm and schedule your break from 4pm to 4.30pm in order to leave at 4pm.

Break times cannot be ruled out by contractual agreement either.

Extra hours

What are extra hours?
Extra hours (Mehrarbeit) – also referred to as extra work, as distinct from overtime (Überstunden) – refers to the hours worked beyond your agreed hours, e.g. 30 per week up to the normal working time set out under labour law (40 hours per week).

What happens if you have a collective agreement with reduced working time, e.g. 38.5 hours per week? Again, extra hours are classified as the working time between the reduced working time, e.g. 38.5 hours, and the statutory normal working time of 40 hours per week.

What are you entitled to in the event of extra hours?
A statutory premium of 25% on top of your normal wage or salary.

If you prefer, you can also agree on compensation time off with your employer in lieu of financial compensation for the extra hours you

work. A combination is also possible: i.e. a mixture of time off in lieu (also known as compensatory time off) and payment of the statutory extra hours premium.

If there are different bonuses for extra hours in the statutory regulations or the collective agreement, you are eligible for the higher of the two.

When aren't I entitled to the statutory premium?

- If you have taken time off for your extra hours at a ratio of 1:1. And more precisely, within the calendar quarter or other specified three-month period in which you worked those hours
- If you have agreed on flexitime and have not exceeded the agreed working time on average within the flexitime period
- If the collective agreement specifically rules out the premium
- If you work extra hours in the time between the statutory normal working time (40 hours) and your reduced weekly working time set out in the collective agreement (e.g. 38.5 hours). These hours are called difference hours

If your collective agreement provides for a premium for the difference in hours, you will receive it – even if you work part-time.

Overtime

What is overtime?
You only work overtime if you work more than the statutory normal working time – i.e. more than 40 hours a week.

How much overtime can I do?
Your employer cannot ask you to work unlimited overtime. The limit is 20 hours per week.

Daily working time is limited to 12 hours, and weekly working time to 60 hours – including overtime. However, working time may not exceed 48 hours per week averaged out over a period of 17 weeks.

The Working Hours Act contains provisions for exceptions. Find out more from your works council, your trade union rep or your Chamber of Labour.

Am I allowed to refuse to work overtime?
Yes, if you have an important personal reason for doing so. One example could be that you have to pick up your child from kindergarten and look after them, and therefore cannot carry on working.

If you have already worked 50 hours a week or 10 hours a day, you are eligible refuse working any further overtime in the week or on the day in question, without giving a reason. Your employer is not allowed to place you at a disadvantage if you refuse to do overtime under such circumstances. If your employer ends the employment relationship or dismisses you as a result, you can contest the dismissal in court within two weeks.

What am I entitled to for working overtime?
You are entitled to a premium of 50% for overtime hours. Many collective agreements contain provisions for higher premiums, e.g. for overtime worked on a Sunday.

Overtime is paid out. However, you can agree to time in lieu at your employer. If you take time off in lieu, you will also receive overtime premium in the form of time off. For example, one hour of overtime at a 50% premium equates to 1.5 hours of compensatory time off. The following agreement is also possible: time in lieu for overtime worked and payment of the overtime premium

You've already worked 50 hours in a week or 10 hours in a day and don't want to/can't do any more overtime in the week or on the day in question? Then you can unilaterally declare whether you want money or time off for these overtime hours. You must inform your employer of your decision as early as possible, and by the end of the payroll period at the latest.

Note down your working hours exactly:

- Start and end of your daily working time
- When you took breaks and how long they were

Lots of contracts contain provisions for expiry periods. As a result, you need to make sure that you ask your employer in writing within a certain time frame to pay you – or give you time off in lieu – for any overtime or extra hours worked.
After this period elapses, they expire and you will no longer be entitled to payment or compensatory time off. It is best to submit your claim for unpaid overtime or extra hours by registered letter.

Working time records

The employer is obliged to keep records of the hours that you have worked.

If you demonstrably request them, your employer is obliged to send you your working time records once a month free of charge.

Be sure to ask for your working time records by registered letter. This way you have the necessary proof that you have requested them.

Part-time and marginal employment

Part-time work

You work 35, 17 or five hours per week?
If your normal weekly working time is less than the normal working time for your industry, you work part-time.

As a part-time employee, you have the same rights and obligations arising from the employment relationship as full-time employees.

Want to change your working time – e.g. reduce the number of hours you work a week from 30 to 25?
Then you must come to a written agreement to this effect with your employer.

What else is important?

- Your employer must inform you if a job offering more hours is advertised
- If you regularly work extra hours, the average of these hours must also be included in your holiday and Christmas allowances.

Marginal employment

You are in a marginal employment relationship if your monthly income stays within a certain limit.
Adjusted annually, it currently amounts to EUR 500.91 a month (2023).

Under labour law, marginal employment is a type of part-time work. Therefore, if you are in marginal employment, you have the same rights and obligations as part-time employees.

For example, you are entitled to continued payment of wages if you are ill, five or six weeks of paid leave per working year, care leave, severance pay, etc.
Please note that a distinction is made between salaried and non-salaried employees when it comes to people in marginal employment.

The main difference relates to social security law:
if you are in marginal employment, rather than being entitled to full insurance, you are only insured against accidents.

Marginal employees workers have the option of organising their own health and pension insurance. This can be done by submitting an application to the Austrian health insurance fund (ÖGK).

How many vacation days do I have?

Finally time to relax!
When and how much leave you are entitled to and when it expires.

Illness on vacation
When illness interrupts annual leave and you keep your leave days as a result.

Holiday pay and compensating unused vacation days
How much the company has to pay you while you are on leave and how unused leave days are accounted for at the end of the employment relationship

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HERE YOU WILL FIND INFORMATION ON THE MOST IMPORTANT REGULATIONS CONCERNING YOUR PAID TIME OFF.

Finally time to relax!

How much leave do I get? When am I allowed to take it, when does it expire? The most important regulations provided for by the Urlaubsgesetz (Paid Leave Act):

How many vacation days am I entitled to?

You are entitled to five weeks' paid leave per working year; 30 working days in total.

From the 26th eligible year of work this rises to six weeks of leave (36 working days).

Usually, the holiday year corresponds to the working year. This means that it starts on the date that you start work at the company.

However, it is possible to change over to a calendar year or another annual period. This can be done by means of a collective agreement, company agreement or written individual agreement.

From what point am I entitled to take leave?

What happens if I've recently started a new employment relationship? Over the first six months of your first year of work, your vacation entitlement increases in proportion to the time you have already been with the company at a rate of 2.5 working days per month during this period.

This means that it takes six months for you to accumulate your full annual leave entitlement (30 working days).

Your entire vacation entitlement accrues at the beginning of the working year from the start of the second working year onwards.

How is leave calculated?

The law shows how working days are calculated: Five weeks = 30 working days. Working days applies to all calendar days with the exception of Sundays and public holidays. However, you can agree with your employer that your leave is calculated in working days instead. So if you work five days a week, you are eligible for 25 days of leave, and if you work four days a week, five weeks would entitle you to 20 days of leave, etc. It is important to note that you are always entitled to five weeks' leave per leave year.

When can I go on vacation?

You must always agree on the use of your annual leave with your employer. Both your personal requirements for time off and the needs of the company must be taken into account.

This means that your employer is not permitted to arbitrarily impose vacation dates on you, nor can you simply take days off without your employer's consent.

Exception: you can unilaterally determine one day of vacation per holiday year (personal day). Remember: you need to inform your employer of the day in question, in writing, at least three months in advance. In this case “in writing” means on paper with your original signature, meaning that notifying your employer by e-mail or fax is not an option.

When does my vacation entitlement expire?

The earliest your vacation entitlement can expire is two years after the end of the holiday year in which it was accrued. Any leave days that you consume are always automatically deducted from the oldest open leave entitlement.

Periods of maternity leave under the Mutterschutzgesetz (Maternity Protection Act) or the Väterkarenzgesetz (Paternity Leave Act) extend the expiry period by the length of the parental leave taken.

e.g.

Barbara Busybee uses just two weeks of leave in her holiday year (in her case, 1 January to 31 December 2016). In the following holiday year (2017), she goes on leave for three weeks.

This means that as at 1 January 2018, her leave from 2016 is used up in full but her entitlement from 2017 (five weeks) is still completely untouched.

If Barbara did not take any more leave between 1 January 2018 and the end of 2019, then her five weeks of leave from 2017 would lapse.

Illness on vacation

Nobody wants to get sick on vacation. The good news: under certain conditions, you will not need to consume your leave entitlement for the days on which you are ill.

Your vacation is interrupted by illness if

- you did not cause the illness intentionally or through gross negligence,
- the illness lasts longer than three calendar days,
- you report the illness to your employer after three days at the latest – and
- you present a medical statement (doctor's note) without being asked to do so after you go back to work.

If these conditions are met, the sick days will not be deducted from your leave entitlement – they are counted as sick leave instead. However, if you are for instance sick for two days during your leave, these two days still count as leave and not sick leave.

Sick days do not extend your leave. As soon as the agreed leave is over or you are healthy again, you must return to work.

Illness abroad
If you fall ill while on vacation abroad, you will need official confirmation from the authorities, in addition to a medical certificate. The official confirmation must show that your medical certificate was issued by a person who is licensed to practise medicine.
If you receive treatment in a hospital, no such official confirmation is required as long as the hospital issues a confirmation of the medical care it provided.

Holiday pay and compensating unused vacation days

Holiday pay

Holiday pay is the pay you receive, even though you do not work during the holiday.

It corresponds to the remuneration you would have normally received if you had not gone on leave (compensation principle). If this cannot be determined – for example, the amount you are paid varies from month to month – the average of the last 13 weeks you worked in full is used as the basis of calculation.

In some cases, the collective agreement may provide for an alternative method of calculation.

Compensating unused vacation days

Often when an employment relationship comes to an end, the employee still has unused vacation days. Your employer must pay you for these days.

The following applies:

- Unused leave from the ongoing leave year will be paid out on a pro rata basis, less any vacation days that you have already used
- Unused vacation entitlements from previous years that have not expired are paid out in full

If you are paid leave when your employment relationship ends, your entitlement to claim unemployment benefit is suspended during this period. This means that although the date on which you can start to claim unemployment benefit is postponed, the actual duration you are entitled to claim it is not reduced.

!

If you quit without following the proper procedure, you are not entitled to compensation for the fifth and sixth week of vacation in the current holiday year. In this case, the compensation for unused vacation is calculated based on a minimum vacation entitlement of four weeks.

What is important to remember when it comes to sick leave?

Sickness, health retreats and accidents at work...
All eventualities in which you are entitled for continued payment.

Conditions for continued remuneration
What does temporary incapacity for work mean, how do you have to behave during sick leave and what are your notification obligations?

Amount and due date for payment of sick pay
The principle of compensation applies: you will receive the payment to which you would otherwise be entitled if you were not on sick leave.

How long you can claim sick pay for
The length of time that payment of wages will continue is largely regulated in the same way for both white-collar and blue-collar worker

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FIND OUT HERE WHEN – AND HOW MUCH – YOUR EMPLOYER HAS TO PAY WHEN YOU ARE ON SICK LEAVE.

Sickness, health retreats and accidents at work...

Continued payment of regular remuneration is one of the most important achievements of social policy as it ensures that you are still adequately provided for in situations where you are unable to perform your work due to an accident or illness.

Continued payment of remuneration = the limited-term continued payment of remuneration by the company during a period of sick leave.
Sick pay = designation for the remuneration paid by the company during continued payment of remuneration.
Sickness benefit = the financial benefit from the Austrian health insurance fund (ÖGK) that you receive after continued payment of remuneration by your company partially or fully stops.

As an employee, you are entitled to continued payment of remuneration in the following scenarios:

1 Illness

- **Illness**
  This is understood to mean any irregular physical or mental condition that makes treatment necessary.

- **Accident**
  These are accidents that happen during your private leisure time.

- **Health retreats (Kur) and convalescent stays**
  These serve to restore, improve or maintain an individual's ability to work.

2 Industrial accident or occupational disease

- **Industrial accident**
  The term applied to accidents that are related to your work. This also includes those accidents that happen on your way directly to and from your place of work.

- **Occupational disease**
  This is an illness caused by employment, as listed in an appendix to the Allgemeines Sozialversicherungsgesetz (General Social Security Act). In individual cases, specific diseases may be classified as an occupational disease. To qualify as such, it must be caused by the use of harmful substances or exposure to radiation at work and deemed to be so by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

Requirements for the continued payment of remuneration

You must meet the following conditions in order to claim continued payment of remuneration (sick pay) by your employer:

Temporary incapacity for work

Not every illness means that you cannot work. You are only entitled to continued payment of wages if your illness leaves you unable to work. This means that you are unable to perform the contractually agreed work for health reasons.

You must not do anything during sick leave that could delay your recovery.
Misconduct can be taken as grounds for dismissal!

No instance of gross negligence

You must not have caused the illness yourself, either through gross negligence or even intentionally.

e.g. Ronny Reckless drives a car while drunk and causes an accident in which he is injured. He has to go on sick leave for four weeks as a result. In this instance, his employer would not be obliged to continue paying his wages while he is off sick.

Obligation to notify and provide evidence

If you fall ill, you must notify your employer immediately that you are unable to work (obligation to notify).

Next, you need to consult a doctor without delay to get an official sick note. This is because the employer has the right to demand a medical statement (doctor's note) from you – even if you are only sick for one day (obligation to provide proof). When it comes to extended periods of sick leave, your employer can make repeated requests for medical evidence of your temporary incapacity for work after a reasonable period of time.

The confirmation must include the beginning, expected duration and cause of your temporary incapacity for work.
However, when giving the cause of your temporary incapacity for work, the confirmation only has to state whether it is due to illness, an accident at work, etc. Under no circumstances does a diagnosis have to be disclosed.

If you do not comply with your obligations as far as providing proof and notification are concerned, you run the risk of forfeiting your right to continued payment of remuneration when ill for as long as you fail to meet your obligations. Still, failure to comply with these duties does not generally constitute grounds for dismissal.

Amount and due date for payment of sick pay

Here you can find out how much sick pay you will receive and when the employer has to pay it to you.

Amount of continued remuneration

When taking sick leave, you cannot be left financially worse off when you take sick leave than if you were still working. This means that you must receive the payment that you would have received if the illness had not occurred – the so called sick pay.

If the amount of the "loss" cannot be determined – e.g. because your pay varies from month to month – the average for the last 13 weeks you worked in full is used as the basis for the calculation for continued payment of remuneration. Overtime, bonuses, piecework wages, etc. must also be included in the calculation.
For commissions, the average for the previous year is used. Allowances and expenses such as per diems or mileage allowances are not included in the calculation.

Due date for payment of sick pay

Sick pay is paid out in the same way as your normal remuneration would have been, had you not become temporarily unable to work.

This means that you will receive sick pay on the contractual or statutory salary or wage payment dates. And this is irrespective of whether the sick leave has ended or not.

e.g.

Vera Virus is a white-collar worker and sick from March 22nd until April 10th. Her sick pay for the period March 22nd until 31st will be paid with her pay for March, i.e. on March 31st at the latest. The sick pay for the time spent off ill from April 1st until 10th is paid with the April salary, i.e. on April 30th at the latest.

If your employer does not comply with the obligation to continue to pay your wages, you can take the case to the Labour and Social Security Court.

How long you can claim sick pay for

For working years since 1 July 2018, the duration of continued payment of remuneration is largely regulated in the same way for white-collar and blue-collar employees.

If you have questions about previous sick leave, please contact your local Chamber of Labour directly.
For white-collar employees, any of the more advantageous regulations set out in the collective agreement or in a company agreement continue to apply. In the event of recurring illness, section 8

paragraph 2 of the amended Angestelltengesetz (Salaried Employees Act) of 1 July 2018 applies in this case – and until such point that the collective agreement or the company agreement is revised.

Duration of continued payment of remuneration in the event of illness and accident

The length of time that your employer has to pay you for depends on how long you have been employed at the company. The following entitlement periods per working year apply:

Length of employment relationship	Full pay	Half pay
1st year	6 weeks	4 weeks
2nd to 15th year	8 weeks	4 weeks
16th to 25th year	10 weeks	4 weeks
From 26th year	12 weeks	4 weeks

In principle, the working year starts on the date you join the company. However, a collective agreement or company agreement may contain a provision that your entitlement to continued payment of remuneration is based on the calendar year instead. Multiple periods of sick leave taken in the same working year are added together.

Duration of continued payment of remuneration in the event of accidents at work and occupational diseases

If you are on sick leave due to an accident at work or an occupational disease, you will continue to be paid for eight weeks per accident

or occupational disease. You will continue to be paid for 10 weeks per occupational accident or disease if you have been in the employment relationship for 15 years.

Entitlement to continued payment of remuneration based on duration of employment relationship	
Up to 15 years	8 weeks per occupational accident
From 16th year	10 weeks per occupational accident

However, if a new temporary period of incapacity to work results directly from the original occupational accident, all such periods within a working year are added together.

Please note that sick leave associated with a "normal" illness and an occupational accident will not be added together.

e.g.

Bertha Badluck is employed by Calcustar GmbH. In her 16th year of work, she falls seriously ill and is on sick leave for 12 weeks. And two months later, she is on sick leave again, this time for three weeks due to an accident at work. Shortly afterwards – still in her 16th year of work – Bertha is back on sick leave for a third time, for another two weeks due to a severe case of the flu.

In total she receives 10 weeks' full pay and two weeks' half pay from Calcustar GmbH for the first illness. For the sick leave she took due to the work accident, she receives her full wages for three weeks – because her first period of sick leave was due to illness while the second period was attributable to the accident.

e.g.

Sick leave taken due to the occupational accident may not be added on. For the third period of sick leave when she is off work due to the flu, Bertha receives half of her salary from Calcustar GmbH. This is because "normal" illnesses within a working year are added together.

Calculation of the duration of the employment relationship

If you're a blue-collar employee
The periods from different employment relationships with the same employer are added together if

- no interruption lasts longer than 60 days and
- the employment relationship was not terminated by employee resignation, culpable dismissal, or unjustified departure.

If you are a white-collar employe
In this case, periods of sick leave from different employment relationships with the same employer are not added together.

e.g.

Laurence Long is a blue-collar employee who was dismissed after 15 years with the Hiandlo company. A month later, Hiandlo re-hires him. Since rejoining, Laurence has been back with the company for seven months without interruption. If he falls ill, Laurence is entitled to 10 weeks' full continued payment of wages as a result. Why? The durations of both of these employment relationships are added together. So he is deemed to have been employed by the company for over 15 years.

▶ If Laurence Long was a white-collar employee, he would be entitled to six weeks' full pay. Why? Because the durations of both employment relationships are not added together. Under the second scenario, only the duration of the second employment relationship (i.e. seven months) counts.

Sickness benefit

If you are only entitled to the continued payment of half of your wages by your employer, you can claim the other half in sickness benefit from ÖGK, the Austrian health insurance fund. If the employer has to continue paying less than 50%, you are entitled to full sickness benefit.

You do not automatically receive sickness benefit. You have to actively apply for it!

Termination of employment during sick leave

Sick leave does not protect you from termination of the working relationship or dismissal by your employer. This means that the employer can still give notice of termination of the working relationship or dismissal while you are on sick leave.

As with any notice of termination or dismissal, you can still check whether you are otherwise protected against termination or dismissal or whether you have the right to challenge your employer's decision (e.g. because the dismissal is seen as having a major impact on your vital personal interests).

Whether your employer is obliged to continue paying sick pay depends on the manner in which the working relationship ends:

Continued payment of remuneration after the end of the employment relationship
You are still entitled to continued payment of remuneration for the specified statutory period under the following circumstances:

- Termination of the working relationship by your employer
- Unjustified dismissal
- Early departure caused by the employer
- Mutual agreement to terminate employment if concluded during sick leave or in light of upcoming sick leave

Besides sick pay, holiday and Christmas allowances must also continue to be paid after the end of the employment relationship.
You are only entitled to all other claims under labour law up until the point that your employment relationship actually ends.

Continued payment of remuneration only until the end of the employment relationship
You are not entitled to continued payment of remuneration in the case of following types of termination:

- End of employment relationship during the probationary period
- Expiry of temporary employment contract
- Employee resignation
- Justified dismissal
- Early departure for which the employer is not responsible

In all of these cases, your entitlement to continued remuneration from your employer expires once your employment relationship ends.

What do I need to keep in mind when it comes to care leave?

Care leave
A family member or a person in the same household falls ill or a child needs to be looked after: when you will still be paid.

Since November 1st 2023 the following law applies:

- You are eligible for care leave for every person living in the same household.
- Further you are eligible for care leave for close relatives living in a different household.

6

READ WHICH REQUIREMENTS APPLY FOR CARE LEAVE.

Care leave

If a close relative or a person living in the same household falls ill or a child needs care, you can stay away from work to look after them. And continue to be paid.

You have a right to care leave under the following circumstances

- **Close relative or person living in the same household falls ill**
  You have to care for a close relative or a person/close relative who lives in the same household. In this case, you have a right to care leave (Krankenpflegefreistellung).

- **Your childcare arrangements fail**
  Your child is healthy, but the person who usually looks after her/him cannot do so for a serious and legitimate reason. In this case, you also have a right to take care leave. Reasons for absence may include illness or hospitalisation of your normal caregiver.

- **Your child has to go to hospital**
  If you accompany your child under the age of 10 on an inpatient stay at a clinic or care facility, you are also entitled to caregiver's leave.

Applies in all cases: if the child in question is the biological child of your spouse, registered partner or life partner, you must live in a shared household. If it is your biological, adopted or foster child, you do not have to live in a shared household.

Who qualifies as a close relative?

- Spouse
- Registered partner
- Life partner
- Biological, adopted or foster children
- Grandchildren and great-grandchildren
- Parents, grandparents and great-grandparents
- Biological children of spouses, registered partners or life partners – provided that they live in the same household

Who do I have to inform?
Your employer – as soon as possible.

It is also important to note that you must provide proof of the reason for your care leave. But you are free to choose how you prove this. If your company requires a certain form of proof, e.g. a medical statement, it must bear the costs for this.

Duration of care leave

How long am I allowed to be absent from work?
You are entitled to one week of care leave per working year corresponding to your regular weekly working time.
So, if you work 27 hours per week, you have 27 hours of care leave per working year.

You can take care leave by the week, day or hour as required.

You are entitled to a total of **one week of care leave per working year** under all three variants, irrespective of the number of children, relatives or persons living in the same household you care for or look after.

When am I entitled to a second week of care leave?
If your child under 12 falls ill again, you will be granted a second week of care leave. Provided that you are not entitled to continued payment of remuneration by the employer on the basis of other legal provisions.

In this case, too, the following applies: If the child in question is the biological child of your spouse, registered partner or life partner, you must live with them in a shared household. If it is your biological, adopted or foster child, you do not have to live with them in a shared household.

You are only entitled to a second week of care leave if the child falls ill again. But not if the illness continues uninterrupted for two weeks.

Payment during care leave

You will continue to receive your normal remuneration. The situation is treated as if your work output had not been lost (compensation principle).

How can employment relationships end?

Ways of ending an employment relationship
From ending the employment relationship during your probationary period to termination of employment and dismissal – how employment relationships can end.

Challenging a notice of termination of employment
Under certain conditions, you can contest a termination or dismissal etc.

7

IN THIS CHAPTER, YOU WILL LEARN ABOUT THE VARIOUS WAYS AN EMPLOYMENT RELATIONSHIP CAN END AND WHAT YOU NEED TO BEAR IN MIND.

Ways of ending an employment relationship

From ending the employment relationship during the probationary period to termination and dismissal: what you are entitled to depends on how your employment relationship ended.

Consequently it is important that you are able to distinguish between the various ways that this can happen. Read on for an overview.

End of employment relationship during the probationary period

A probationary period only applies if you have explicitly agreed to one with your employer or if it is provided for in your collective agreement.

During the probationary period, both employer and employee may terminate the employment relationship at any time. No deadlines or dates have to be met. Also, no reason needs to be given for ending the working relationship.

How long is the probationary period allowed to go on for?
A maximum of one month.

Is the probationary period agreed in your employment contract longer than one month? In that case, a temporary employment contract enters into force after one month.

Your collective agreement stipulates a shorter probationary period than the one you have agreed in your employment contract? In such cases, a temporary employment contract enters into force when the probationary period stipulated in the collective agreement ends.

Ending the employment relationship during the probationary period does not count as termination. During the probationary period, you do not have any protection against being let go. However, you have the right to contest the decision if your employer ends the working relationship during the probationary period for discriminatory reasons. Turn to the chapter titled "Challenging a notice of termination of employment" for details.

Deadline

In a temporary employment relationship, the duration is fixed from the outset.

Your employment relationship can only be for a limited term if you have agreed to it with your employer.

If you have a temporary employment relationship, it ends automatically at the end of the fixed term – unless you have agreed otherwise.

However, you should still inform your employer that you will not be extending the employment relationship on the last day of the fixed-term contract at the latest. This is to avoid any misunderstandings.

Limited-term employment relationships may also be brought to an end by mutual consent, or by early resignation or dismissal before the term ends.

Termination of employment or dismissal by your employer or resignation on your part are only possible before the term ends if you have agreed on the possibility of termination of the employment relationship during this period with your employer.

What happens if I continue to work after the term expires?
Then you will move over to a permanent employment relationship unless you have agreed on a further time limit with your employer.

What is a consecutive fixed-term contract?
If you are offered a series of consecutive temporary employment contracts by the same employer, you are on a rolling employment contract (Kettenarbeitsvertrag).

The limited-term contract circumvents various protective provisions – in particular those designed to protect you against dismissal.
As a result, repeated fixed terms are only permissible if they are objectively justified. By extension, even a single temporary extension may already be prohibited.

Whether a fixed term is objectively justified must always be assessed on a case-by-case basis.

Mutual agreement to terminate employment

In the case of termination of employment by mutual agreement, you agree with your employer to end your employment relationship on a certain day. Under these circumstances, you do not need to take specific deadlines or dates into account.

Always make sure that you conclude a mutual agreement to terminate employment in writing. Verbal agreements are difficult to prove.

Have you agreed a non-compete clause or repayment of training costs?
These still apply in the event of a termination by mutual agreement. If your employer waives the non-compete clause or the repayment of training costs, make sure that you get it in writing. Ideally in the document setting out the mutual agreement to end your employment.

There are regulations in place that are designed to protect you if you are pregnant, on parental leave or part-time working for parents, or if you are on military service, civilian national service or military training service (Ausbildungsdienst). In such cases you should contact your Chamber of Labour!

Termination/dismissal/resignation

A notice of termination is a unilateral declaration of intent that the other party must receive. This means that a termination/dismissal/resignation can only enter into effect when you or your employer are informed about it. The notice period only starts at this point in time.

Termination/dismissal/resignation does not require the other party's consent.

What form does a notice of termination/dismissal/resignation have to take?
Normally there is no specific form, meaning that it can be expressed in writing or verbally.

However, if your employment contract or collective agreement stipulates that a specific form applies, then you must abide by that.

For example, contracts often contain a line saying: written form – otherwise legally ineffective. In other words, you must give notice in writing, otherwise it will not be valid.

Written form usually means on paper with an original signature. So by this definition, an e-mail, SMS or fax does not qualify as “in writing”!

What do date of termination of employment and period of notice mean?
The **date of termination of employment** is the day on which your employment relationship ends. This could be the last day of the month, or the end of a calendar week. The date of termination of employment is not the day on which notice of termination/dismissal/resignation is given.

The **notice period** is the period between the date that the notice of termination/dismissal/resignation is given until the end of your employment relationship, i.e. until the date of termination of employment. The notice period does not start when you send your notice by post. It only begins when your employer receives the notice of termination.

Make sure that you give your employer your notice in person and have them confirm that they have received it in writing.

What happens if I do not observe the notice deadline or notice period?
Then your notice will still end your employment relationship.

However, there are negative consequences of doing so: many collective agreements contain provisions for non-payment of holiday and Christmas allowances. The employer can also claim damages.

If your employer has terminated your employment relationship/dismissed you, you are entitled to additional time off during the notice period. However, you must actively reach an agreement to this effect with your employer.
Some collective agreements also provide for this additional time off if the employer terminates the employment relationship. In any case, you need to check your collective agreement to see what applies in your situation.

Dismissal and departure

What is the difference between a dismissal and a departure?
In the event of a **dismissal**, your employer terminates the employment relationship with important reason. In the event of a **departure**, you terminate the employment relationship with important reason.

Under both scenarios, your employment relationship ends as soon as the dismissal or departure is announced to the other party to the contract. Neither formal requirements nor deadlines or dates apply.

When are dismissals and departures justified and when are they unjustified?
The law specifies certain grounds for dismissal or departure. If one of these reasons applies, then your dismissal or departure is justified. And if not, your dismissal or departure is unjustified.

Examples of grounds for dismissal:
Breach of a non-compete clause, theft

Possible reasons for departure:
Withholding essential elements of remuneration, gross defamation

A departure or dismissal that is not justified also ends your employment relationship immediately.

Be sure to get legal advice before you leave. This is because the courts examine whether the conditions for a justified departure are met very carefully.

Consequences of a justified departure and unjustified dismissal
In these cases, you will be in the same financial position as if your employer had ended your working relationship with good cause. This means you are also entitled to severance pay under the old system. Moreover, you will also receive compensation for the termination of the working relationship. This means that your company must pay everything that you would have otherwise earned during the notional notice period: e.g. any unused holiday entitlement, 12 months' termination benefit instead of nine if you would have completed your 25th year of service during the notional notice period.

If you do not claim within six months, this additional compensation is forfeited meaning that you are no longer legally entitled to it!

Consequences of an unjustified departure and a justified, culpable dismissal
If you end the employment relationship without justification or are dismissed through fault on your part, this has negative consequences. For example, you lose your entitlement to severance pay under the old system and may even be liable for damages.

Death of the employee

Workers are obliged to perform their contractual duties themselves. Death therefore terminates an employment relationship.

Challenging a notice of termination of employment

Contesting termination or dismissal under section 105 / section 106 Arbeitsverfassungsgesetz (Labour Relations Act)

If your employer has terminated your working relationship, you can file a complaint with the court under certain conditions. If you win, your employer must continue to employ you. But bear in mind: the deadlines are very tight.

When can I file a challenge?
If your dismissal or layoff is deemed as having a major impact on your vital personal interests, you can challenge it by filing a complaint with the Labour and Social Security Court.
Prerequisite: You have been working for at least six months in a company that satisfies the conditions needed to set up a works council.

Likewise, you can challenge dismissals motivated by reasons that are frowned upon by the law if you work in a company that satisfies the conditions needed to set up a works council. This applies even if you have not been working there for six months.

Such motives are for example playing an active role in a trade union or calling a works meeting.

When does a company need to set up a works council?
If it has at least five permanent employees. However, there is no need for a works council to actually be established in order for you to challenge such decisions.

When is a dismissal deemed as having a major impact on my vital personal interests?
If it affects your essential interests as an employee.

The court will look at the overall economic and social situation of you and your family. Factors that come under consideration include: cost of living, assets, debts, maintenance obligations, expected duration of unemployment.

However, a dismissal is not deemed as having a major impact on your vital personal interests – even if your substantial interests are affected – if:

- there are circumstances related to your personal situation that affect operational interests, e.g. if you have committed significant breaches of your obligations, **or**
- operational developments preclude your continued employment, e.g. a decline in orders.

There is only a very short period of time in which you can launch a legal challenge. The complaint must be submitted to the court within two weeks in most cases, and in some cases it could even be one week! As a result, you need to report to your works council and to the chamber of labour responsible for your area immediately after dismissal. And you need to clarify as soon as possible whether a challenge is possible in the first place or even has a chance of succeeding.

What happens if I have been dismissed without important cause?
Then you can challenge the dismissal in court under the same conditions as a termination.

End of employment relationship on discriminatory grounds

If your employer ends your employment for a prohibited reason, there are two possible courses of action open to you:

- Contesting the end of the employment relationship or
- Suing for damages

Under what circumstances is terminating an employment relationship deemed discriminatory?
If it is for one of the following reasons:

- Ethnic affiliation
- Religion or belief
- Age
- Sexual orientation
- Disability
- Gender

Which ways of ending the employment relationship does the ban on discrimination apply to?
Discrimination is prohibited under the following circumstances:

- End of employment relationship during the probationary period
- Termination of employment or dismissal by your employer
- Dismissal
- Expiry of time limit if the intention was to convert a temporary employment contract into a permanent employment relationship

The challenge must be filed with the court within two weeks, and you have six months to claim damages.

As a result you need to seek legal advice immediately if you suspect that your employment relationship has been ended for a prohibited reason!

When do I receive severance pay?

New severance pay system (Abfertigung neu)
Your employment relationship comes under the new system if you entered employment on or after January 1st 2003.

Old severance pay system (Abfertigung alt)
If you started working before January 1st 2003, you are covered by the old system.

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THIS CHAPTER EXPLAINS WHEN YOU RECEIVE SEVERANCE PAY AND HOW MUCH.

New severance pay system

If your employment relationship started on or after January 1st 2003, it is covered by the new severance pay system.
Under this system, you receive severance pay from the employee benefit fund, and not your employer.

If your employer has agreed to re-employ you, the old severance pay system could still apply even if you started working for the company on or after January 1st 2003

Employee benefit fund

From the second month of employment onwards, your employer pays 1.53% of your gross monthly salary (including special payments) to the health insurance fund, which then forwards these contributions to the selected employee benefit fund. This fund manages and invests the contributions for you.

The way in which the employee benefit fund is selected depends on whether your company has a works council:

- **Companies with a works council**
  In this case, the employer and the works council conclude a works agreement about the choice of employee benefit fund.

- **Companies without a works council**
  Here, the employer selects the employee benefit fund, but must inform each employee in writing stating the fund they would like the company to join. The company then joins the selected fund it proposed unless at least one third of the employees submit a written objection within two weeks. If the employees object, the employer must propose another employee benefit fund. You can contact the trade union for advice on the employer's proposal. If

it is still not possible to reach an agreement, the two sides can take the case to arbitration.

The name of the selected employee benefit fund must be included on your service record.

How high is my severance pay?

Your severance pay is calculated like this:

Total contributions
+ interest
- Administrative costs and cash expenses

= Gross severance pay

6% income tax is deducted from the gross amount.

Regular account statements

Your monthly payslip must include the assessment basis and the monthly contribution to the employee benefit fund. You can also request an annual statement from the employee benefit fund.

Your entitlement to severance pay

When can I demand payment?
Once you have paid contributions for three years, you can demand payment of your severance pay from the employee benefit fund in the following cases:

- Termination of employment or dismissal by your employer
- Your temporary employment contract expires
- Mutual agreement to terminate employment
- Non-culpable dismissal
- Justified early departure

The contribution periods do not have to be related to a single employer. The periods of time you have worked for different employers are added together.

If you resign during a period of part-time employment for working parents granted in accordance with the Maternity Protection Act or the Paternity Leave Act, you can also demand payment of severance pay. Again, you must have paid contributions for at least three years.

When is my severance pay retained by the employee benefit fund?
The employee benefit fund retains and continues to invest your severance pay in the following cases:

- If you have paid contributions for less than three years
- If you terminate your employment yourself
- If you are culpable for your dismissal
- If you resign without justification

Your severance pay contributions remain on your employee benefit fund account until you meet the criteria for a payout – for example, if you are dismissed. If this happens, you can claim your severance pay contributions in full, including those carried forward from previous employment relationships.

e.g.

Catherine worked for ABC GmbH from 1 January 2014 to 30 April 2015 and for XYZ GmbH from 1 May 2015 to 28 February 2017. She resigned from her job at ABC and her employment was terminated by XYZ. Catherine can demand payment of her contributions from both jobs.

This is because in her second job, XYZ GmbH terminated her employment. And Catherine completed the required three years of contributions on 28 February 2017, because employees are not required to pay contributions in the first month of employment.

What if I'm not in employment?
If you aren't in work, you can claim payment of severance pay in these three cases:

- When you start claiming your Austrian state pension or a pension in a European Economic Area (EEA) country under similar legislation.

- When you reach the age for early retirement under the Austrian state pension scheme or when you reach the age of 62 (flexible retirement scheme), provided that this age is lower than the early retirement age under the Austrian state pension scheme or under similar legislation of an EEA country at the time your employment ends.

- If no contributions to an employee benefit fund were paid for at least five years, for example because you live abroad.

Do I have to make use of my entitlement to a payout?
No. You have the following options:

- You can demand payment of your severance pay
- You can leave your severance pay with the employee benefit fund and continue to have it invested
- You can transfer your contributions to the employee benefit fund selected by your new employer
- You can transfer your contributions to a private supplementary pension scheme or to a pension fund

I want my severance pay to be paid out or access it in some other way
In this case, you must write to the employee benefit fund within six months of the end of your employment to inform them what you would like to do with your severance pay. If you do not do this, the employee benefit fund will keep on investing your contributions.

I am retiring
If you retire, the employee benefit fund will pay out your severance pay. If you want to handle your severance pay in another way, you must inform the employee benefit fund in writing within three months after the end of your employment.

What happens to my severance pay if I die?
If your employment ends due to your death, your severance pay will be shared between the following people:

- Your spouse
- Your registered partner
- Your biological children, adopted children, foster children and stepchildren, if you were receiving family allowance for them at the time of your death

These eligible recipients must demand payment from the employee benefit fund within three months of your death. If an eligible recipient misses this deadline, they can submit a claim at a later date by taking legal action against the other eligible recipients.

If none of these recipients contact the employee benefit fund within three months of your death, your severance pay will be included in your estate.

When will I receive my severance pay?

The employee benefit fund must pay out your severance pay within five bank working days after the end of the second month following submission of your claim. At the earliest, the two-month period begins when your employment ends.

Old severance pay system

If you started work before January 1st 2003, you are covered by the old severance pay system.

If your employer has agreed to re-employ you, the old severance pay system could still apply, even if you started working for the company on or after January 1st 2003.

Your entitlement

You are only entitled to severance pay if you worked for your employer for at least three years without interruption. You also need to keep the following points in mind:

For which types of termination of employment will I receive severance pay?

You are entitled to receive severance pay in the following cases:

- Your employment is terminated or you are dismissed by your employer
- In case of non-culpable dismissal
- In case of justified early departure
- If your temporary employment contract expires
- If you reach a mutual agreement to terminate your employment

Is your job covered by the Austrian Construction Workers Leave and Severance Pay Act?
If it is, periods in a job of this kind are not counted towards the old severance pay system if you terminate your employment by mutual agreement.

When am I entitled to severance pay even if I terminate my employment myself?

If you resign from or decide to leave your job, you are entitled to severance pay in a wide range of different circumstances. These are:

- When you start claiming a pension
- After reaching the age of 60 for women or 65 for men
- If you receive an official notice of temporary incapacity for work or notice of disability lasting at least six months
- In case of sick leave after your entitlement to continued payment of remuneration expires and after you stop receiving sickness benefit. At the same time, a benefit assessment for your temporary incapacity for work or disability pension must be in progress

If you meet certain conditions, you are also entitled to severance pay if you resign after becoming a parent or in the case of justified early resignation. However, in this case you will only receive half of the statutory severance pay, and a maximum of up to three months' pay.

Please contact your local Chamber of Labour before you notify your employer that you plan to resign or leave the company. We will check whether you meet the requirements for claiming severance pay.

Your severance pay depends on how long you have been employed:

After 3 years of service	2 times your monthly pay
After 5 years of service	3 times your monthly pay
After 10 years of service	4 times your monthly pay
After 15 years of service	6 times your monthly pay
After 20 years of service	9 times your monthly pay
After 25 years of service	12 times your monthly pay

What periods are taken into account?
Apprenticeships are included in the calculation of your period of service if you were employed for at least seven years including the apprenticeship period.

Periods of maternity leave are counted in full. Periods of parental leave for children born, adopted or fostered before 1 August 2019 are not counted. Periods of parental leave for children born, adopted or fostered on or after 1 August 2019 are counted up to the maximum level specified in the legislation. In some cases, though, the collective agreements include more generous conditions.

Periods of military service, civilian national service and military training service are counted in full.

How is my severance pay calculated?
Your severance pay is calculated on the basis of your most recent gross monthly salary.

This includes:

- Your regular recurring remuneration, such as your salary, commissions, overtime pay, etc.
- A proportion of any special payments, e.g. vacation and Christmas allowance

Expense allowances such as mileage allowances and per diems are not included in the calculation. If your remuneration includes irregular components that change, such as overtime pay or commissions, the average for a full year is applied in case of doubt. Income tax of 6% is deducted from your gross severance pay.

When will I receive my severance pay?

When you leave your employer, you must receive severance pay equivalent to three months' remuneration. If you are entitled to any other payments, your employer must pay them in monthly instalments from the first day of the fourth month following the end of your employment. Each instalment is equivalent to one month's pay.

e.g.

Fiona Smith is dismissed by her employer after 20 years' service. Her employment ends on 31 January 2017. She is entitled to severance pay of EUR 9,000 net, which is nine times her monthly pay.
Fiona's employer must pay her EUR 3,000 on 31 January 2017. The remaining EUR 6,000 is paid in monthly instalments from 1 May 2017 to 1 October 2017.

Am I entitled to severance pay even though I resigned or decided to leave the company?

For more information, see the section "When am I entitled to severance pay even if I terminate my employment myself?"

In this case, your employer is allowed to pay your severance in monthly instalments. Each instalment must be equal to at least half of your monthly pay. The first instalment must be paid on the first day of the month following the end of your employment.

If you terminate your employment relationship because you become a parent, the normal regulations regarding the payment due date apply. See the section “When will I receive my severance pay?” for further details.

How can I switch from the old to the new severance pay system?

You can conclude a written agreement with your employer about switching to the new severance pay system. You have two options:

- **Freezing your current severance pay entitlement**
  In this case, you agree a cut-off date with your employer. The severance pay entitlement that you would have built up before the cut-off date, e.g. nine months’ pay after 20 years of service, is still covered by the regulations for the old system. This means, for example, that you lose your severance pay entitlement if you terminate the employment relationship yourself. From the agreed cut-off date onwards, your employer will pay contributions into the employee benefit fund. The regulations for the new severance pay system apply to these contributions.

- **Transferring an agreed amount to the employee benefit fund**
  Here, you and your employer reach agreement on an amount that your employer will pay into the employee benefit fund. The regulations for the new severance pay system apply to the transferred amount and to the contributions paid from the cut-off date onwards.

What is a transfer of undertakings (Betriebsübergang)?

A quick guide
When does a transfer of undertakings (also known as a business transfer) take place?

Your rights in the event of a business transfer
Generally speaking, when a business transfer takes place, your employment contract, including all rights and obligations, is transferred to the new owner of the business.

Business transfers and termination of employment by your employer
Companies are not allowed to dismiss employees simply **because** a business transfer takes place. However, dismissing employees is not completely prohibited.

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THIS SECTION TELLS YOU WHAT A BUSINESS TRANSFER IS AND WHAT YOU NEED TO BEAR IN MIND IN BUSINESS TRANSFER SITUATIONS

A quick guide

If a company is sold, leased, etc., this results in a change of ownership. It is known as a business transfer. This must relate to a single economic entity, which could be a company, an operation or part of an operation.

e.g.

Eddie Eatwell leases his restaurant to Nora Vegan. Credit Bank is acquired by Deposit Bank, and the two banks merge. As a result, Credit Bank no longer exists as an independent company.

Your rights in the event of a business transfer

!

When a business transfer such as this occurs, your employment contract, including all rights and obligations, is transferred to your new employer. This means your employment relationship is not interrupted. As a result, you are not entitled to any compensation such as severance pay or compensation for any unused vacation. There is also no need to sign a new employment contract – the old one still applies.

Written notification

If the operation or company does not have a works council, either the old or new company must notify you in writing in advance of the business transfer. This can also take the form of a notice posted in a suitable place at the operation or company.

Wages and salaries

What if I receive the minimum wage allowed under the collective agreement?
In this case, your wage for normal working time must not be reduced if a business transfer takes place. This still applies even if a new collective agreement sets a lower minimum wage for normal working time. Reductions in the wages specified in individual employees' contracts are only allowed one year after the transfer at the earliest.

What if my pay is above the level in the collective agreement?
Again, your new employer must comply with the conditions in your particular contract. The employer can only reduce your pay with your agreement.

Collective agreement

With a few exceptions, if the business transfer results in a change of collective agreement, the new collective agreement applies – even if the terms of the new agreement are worse.

If your new employer is not covered by a collective agreement, the old collective agreement still applies for you personally.

Company agreements

If company agreements are in place for the same aspects of your employment at the new operation as they were at the previous one, you are covered by the company agreements at the new operation. Again, this is the case even if the terms are less favourable.
If the new operation does not have a company agreement on a particular matter, the old agreement still applies to you.

Business transfers and termination of employment by your employer

There are no regulations that entirely prohibit an employer from dismissing employees in the course of a business transfer. For example, employment can be terminated for organisational or financial reasons.

However, employers are not allowed to dismiss employees simply because a business transfer has taken place.

My employment was terminated due to a business transfer but I would like to carry on working for the company – what can I do?
In this case, you need to inform your employer by registered mail that your dismissal is not legally valid because you want to continue the employment relationship.

If your employer disputes this, you can take the case to the Labour and Social Security Court to have your employment relationship declared valid.

You must do this quickly. The letter has to be sent and the case submitted to the Labour and Social Security Court without delay.

My employment was terminated due to a business transfer and I don't want to carry on working for the company – what should I do?
In this case, you do not need to do anything. You have the same entitlements as if the employer had terminated your employment in a situation other than a business transfer.

What if the termination of my employment had nothing to do with a business transfer taking place?
In this case, the termination is permitted. However, you can contest the decision under certain circumstances – for example if it is deemed as having a major impact on your vital personal interests.

In most instances, the case must be taken to the Labour and Social Security Court within two weeks when contesting termination, although in some cases you will only have one week to do so.

When am I liable for damages?

Employee liability
Situations in which you are generally liable for damages.

Degree of fault
Excusable misconduct, slight and gross negligence and intent – we explain what they all mean.

Level of liability to pay damages
Which circumstances are taken into account when assessing the level of damages you will have to pay?

Your employer is claiming compensation from you
What needs to be done, if your employer sues your for damages?

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WE GIVE YOU AN OVERVIEW
OF THE REGULATIONS ON EMPLOYEE LIABILITY.

Employee liability

When you sign an employment contract, you undertake to perform work for your employer. When doing so, you need to exercise the necessary care in order to avoid causing damage. If you do not take care, you are liable for any damage that occurs.

As employees have limited financial means, the Dienstnehmerhaftpflichtgesetz (Employee Liability Act) limits their liability and obligation to pay compensation. Liability for damages mainly depends on the employee's degree of fault.

Degree of fault

Excusable misconduct

A mistake is excusable if an employee would only have been able to foresee the damage caused, if they had paid exceptional attention. An employee is not liable for any damages in cases of excusable misconduct.

Slight negligence

Slight negligence occurs if a mistake is made that can also happen to an employee who is acting with care. In situations like this, a court can reduce or waive the employee's liability for damages.

Gross negligence

Gross negligence refers to the conduct of an employee who fails to take the necessary care in a way that is unusual and conspicuous. In addition, it was probable and predictable that damage would

occur in the situation in question. In the interest of balance, a court can reduce an employee's liability for damages, but cannot waive it altogether.

Wilful misconduct

If misconduct is wilful, there is no limit on an employee's liability to pay compensation.

Level of liability to pay damages

How is the level of liability to pay damages calculated? Above all, the amount of any damages to be paid depends on the employee's degree of fault. When calculating the level of damages, the court also considers the following circumstances:

- Did the activity in question involve a high degree of responsibility on the employee's part?
- To what extent does the employee's pay reflect the risks associated with the activity in question?
- What level of training did the employee have?
- Under what conditions did the employee have to carry out their job?
- Based on experience, was it difficult to avoid the occurrence of damage or was it very likely that damage would occur in the course of the employee performing the work?

Your employer is claiming compensation from you

What should I do if my employer sues me for damages?

It is difficult to estimate the degree of fault and the level of damages that might have to be paid. So if your employer or another party that has suffered damage sues you for compensation, you should contact your local Chamber of Labour.

My employer is demanding that I pay damages

In case of excusable misconduct, you should tell your employer that you are not liable for the damage and that you will not pay. If your employer disagrees, the onus is on them to take the matter to court.

If cases of slight or gross negligence, you can always try to reach an agreement with your employer in order to avoid legal proceedings. If it is not possible to find an agreement, it is up to your employer to take legal action.

If the case goes to court, the judge will determine the degree of fault and the damages to be paid. The judge also decides whether you have to pay the full amount of compensation or – as it is frequently the case – only part of the amount.

My employer is deducting the damages from my pay

Employers often inform an employee that any damages will be deducted from their pay. Or damages might be deducted from your

wages or salary without any notification at all. This is only allowed unless you object within 14 days, so it is advisable to inform your employer within 14 days by registered mail that you object to deductions from your pay (or the threat of deductions).

Your employer must receive the letter within 14 days. Simply sending the letter within 14 days is not sufficient.

If you object, your employer cannot deduct any damages from your pay. A court then decides whether you are liable for compensation and determines the amount that you have to pay. You have no right to object if your employer deducts damages from your pay on the basis of a legally binding judgement.

My employer/an injured party is suing me for damages

If this happens, you should contact your local Chamber of Labour as soon as possible.

Notes

THE AK – ALWAYS THERE WHEN YOU NEED US

Do you want to talk to us? Watch our videos? Or get to know more about us on social media? Feel free to look around our website or pull up a chair and make yourself comfortable in the AK library. **We're there for you – whenever you need us**

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Important

While we take great care in preparing the content of our guides, we are unable to guarantee that all of the information provided is complete. For help with specific questions call our hotline on (0)1 501 650

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- E-mail: mitgliederservice@akwien.at
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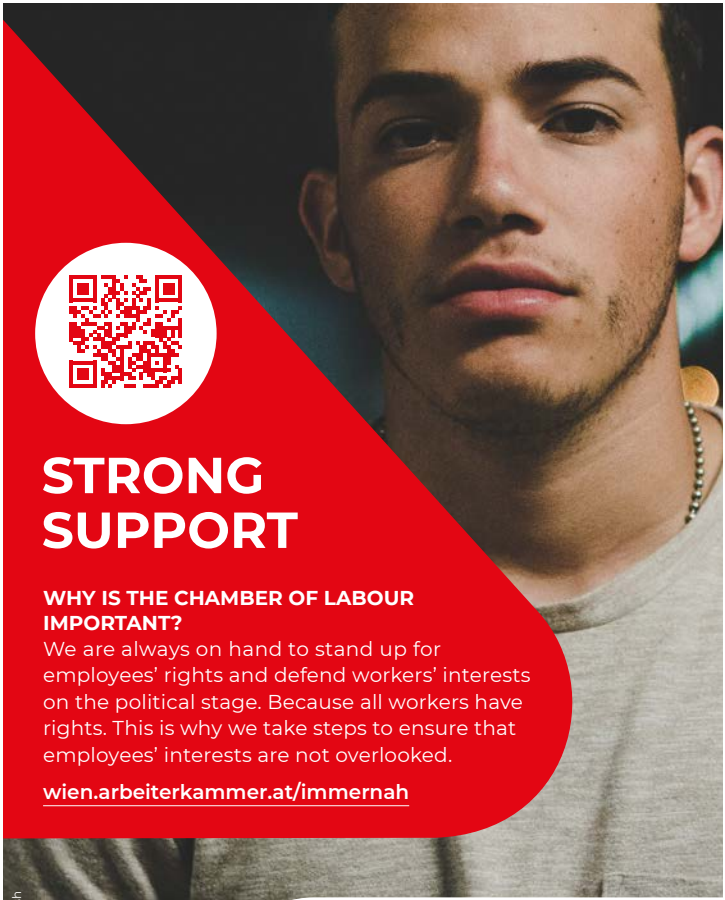

STRONG SUPPORT

WHY IS THE CHAMBER OF LABOUR IMPORTANT?

We are always on hand to stand up for employees' rights and defend workers' interests on the political stage. Because all workers have rights. This is why we take steps to ensure that employees' interests are not overlooked.

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