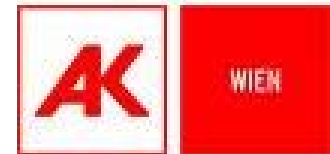


Welcome!

Working in Austria

Your Legal Rights

Mag. Selma Gonzales



What must I know?

What needs to be agreed upon between employer and employee when starting a new job?

- Job description
- Salary
- Working hours
- Workplace
- Notice periods
- Certain benefits like the 13th. and 14th. remuneration

My sources of information

How do I know my rights and obligations when I start working?

1. My own working contract (number 1 source!)
2. Collective Bargaining Agreement
3. General Labour Law such as Allgemeines Bürgerliches Gesetzbuch, Angestelltengesetz
4. Special laws (Holiday Law Act, Continuation of Remuneration Act, Working Time Law Act, etc.)

Criteria of a Working Contract

- Personal and economical dependence on employer
- Employee owes time and duty to work, not results
- Continuing obligation
- Personal work performance (no substitute person)
- Use of employer's equipment
- Integration into company/firm/business
- Salary

Artists, teachers in public schools, public officers, etc.
etc. are not employees (not members of the AK)

Service Note (Dienstzettel)

§ 2 AVRAG

- Written notification about the oral agreement (=is not a working contract)
- Only for employment longer than 2 months and in lack of written working contract

Important

The Name + Address of Employer must be correct and valid!

Check the telephone number, email, and fax!

All data must be correct and in accordance with the oral agreement

Salary

- Always a matter of **negotiation!**
- It should always be clear how much money shall be paid for what time at work!
- We have minimum standards!

Monthly Salary

→ Agreement in **gross salary** (Brutto!)

→ **net salary** shall be transferred onto your bank account (or cash) each month (Netto!)

You can find payment regulations in:

- contract
- collective agreements
- Dienstzettel

Supplementary Grants - Remuneration

- 13th. + 14th. remuneration
= „Holiday Payment“ and „Christmas Payment“
= **Urlaubsgeld & Weihnachtsgeld = Sonderzahlungen**
 - Should be agreed upon in contract if there is not a collective agreement applicable
 - Monthly factoring at beginning and end of employment
 - No payout of supplementary remuneration in case of sudden end of working contract (justified discharge, unjustified early release/contract out)

Working Time

= work is counted from starting work until finishing work. Breaks are excluded from working time

- Information source: working contract, collective agreement, Labour Time Act (= Arbeitszeitgesetz)
- normal working time in Austria → 40 hours/week
- Different working hours for different jobs:
 - Specific regulation in the collective agreement
 - Working contract
 - Company regulations
- Part Time up until 40 hours/week
- Over 40 Hours → Overtime

Don't forget to keep a record of your working hours in a calendar!

Rest Periods and Holidays

- **Weekend rest** → 36 hours, **including Sunday**
- **Weekly rest** → 36 hours, **including one full day**
- **Rest compensation** → if both not possible
- **Rest for holidays** → no work on holidays from 0 until 24 o'clock

Jänner (Neujahr), 6. Jänner (Dreikönige), Ostermontag, 1. Mai (Staatsfeiertag), Christi Himmelfahrt, Pfingstmontag, Fronleichnam, 15. August (Mariä Himmelfahrt), 26.10. (Nationalfeiertag), 1. November (Allerheiligen), 8. Dezember (Mariä Empfängnis), 25. Dezember (Weihnachten), 26. Dezember (Stephanstag)

- **Holiday compensation** → If you work on holidays → 100% extra

Your rights to paid vacation

- EVERY employee has **5 weeks per year** paid leave of absence (vacation)
- 25 working days (Mo-Fr) or
- 30 working days (Mo-Sa) = always total 5 weeks
- Monthly factoring in first 6 months, after that full entitlement
- **ALWAYS SUBJECT TO AGREEMENT!**
- No vacation during sick leave
- No replacement with money!

Remember: Unused vacation days have to be paid out in money at the end of the contract (= financial Compensation for Vacation Days)

What if you get sick?

Your employer continues to pay your salary in case of

- **illness and private accidents**
- **accident at work**

What to do?

1. inform your employer immediately that you are sick (tel, fax, mail)
2. then go to the doctor and get a doctor's confirmation (Krankenstandsbestätigung)
3. send the doctors's confirmation to your boss
4. Your employer pays a remuneration for sick days

Continued Remuneration in case of sick leave (Krankentgelt)

How long does my company have to pay if I get sick?

Illness or private accidents:

- first year of your employment → 6 weeks 100% + 4 weeks 50% of your salary
- 2 -15 years → 8 weeks 100% + 4 weeks 50%
- over 16 years → 10 weeks 100% + 4 weeks 50%

Accident at work or Illnesses caused by work:

- 0-15 years of employment → 8 weeks 100%
- from 16 years → 10 weeks 100%

Nursing Leave (Pflegefreistellung)

- Nursing leave in case of sickness of the following people :
 - **Close relatives in same household are sick**
 - **Biological and adopted children** (and foster children)
 - **Patchwork-Families** → same household
 - Only in need of **urgent care at home**
 - **Support for children under 10 in hospital**
 - Babysitter is not available and childcare necessary
- Fully paid, 1 week per year (plus 1 extra week for children under 12 years old)
- Entitlement starts with 1st working day
- If all nursing leave is used up → „nursing vacation“ (= vacation days without employer's approval)

Ending the Working Contract

Termination/ending: (= not a notice (no Kündigung)!)

- Termination/ending during probation period
- Lapse of time
- Consensual/mutual resolution

Notice (Kündigung):

- one-sided, declared by employee, declared by employer

Extraordinary Termination :

- Dismissal/early release (fristlose Entlassung)
- Resignation (contract out, = Austritt)

Consensual Termination

= Einvernehmliche Lösung

- you and your boss end the contract in mutual consent
- no notice deadlines (can be effective immediately)
- resolution contract (signature cannot be reversed!)
- no formal requirements (oral, written, e-mail, fax, WhatsApp, etc)
- formal protection for:
 - Women on maternity leave
 - Pregnant women
 - Community service
 - Trainees

*Please be sure to read and understand the
einvernehmliche Lösung before you sign it!*

Notice of Termination - Kündigung

Kündigung = the termination is a unilateral declaration of intent which has to be received and is legally operative and by means of which the employment relationship is to be terminated at a time in the future.

- Without any formal requirement
- no reasons necessary
- no consent necessary
- can be declared at any time
- Also possible to receive or declare during sick leave, holiday, etc

Notice of Termination - Kündigung

- **Notice period** (starts the day after notice declaration, duration depends on job and contract)
- **Notice date** (=last day of work)

How do I know my notice period and my notice date?

- check your contract
- ask employer or works council
- check your collective agreement
- ask the Arbeiterkammer
- check the Labour Law Act

*Incorrect notice or termination
entitles to damage compensation!*

Extraordinary Termination

- dismissal/release ends the contract immediately!
- requires reason given in Labour Law Act (therefore it is justified or unjustified)

Extraordinary Termination:

- → unjustified dismissal = **Entlassung**
- → unjustified early release = **Austritt**
 - Employee: entitled to compensation
 - Employer: entitled to damage compensation, supplementary grants, in some case vacation compensation

Severance Pay - Abfertigung

- Employer pays 1,53% of monthly gross income to an account of certain investment companies (Mitarbeitervorsorge-Abfertigungskassa)
- Employee is entitled to money only after the working contract ended
- Minimum of 3 years of contribution payments

How do I get the money that was saved for me?

Your working contract ends with: regular notice declared by employer, mutual resolution or justified early release + fill out the application form

Rights After Termination of Employment

- **Working Papers:**
 - Certificate of Employment (Arbeitsbescheinigung)
 - Deregistration at the Social Health Insurance (Abmeldung)
 - Salary Statement/ Salary Slip (Endabrechnung)
 - Recommendation Letter (Dienstzeugnis)
- **Final Salary Statement:**
 1. Last salary
 2. Supplementary remuneration proportional (Sonderzahlung)
 3. Compensation for unused vacation days
 4. (+ compensation for fault notice)

Statutory of Limitations

- According to the general law: **3 years**
- Compensation for fault notice: **6 months**
- Very important: limitations of claims agreed in contract → **3 months!**

Be aware!

Public Employment Service (AMS)

Benefits

- Financial payments (55% of income)
- Help with finding employment
- Courses and education

Requirements:

- ✓ unemployment
- ✓ Ability to work
- ✓ Availability and willingness to work

Public Health Insurance

= all in one insurance:

- Health insurance
- Accident insurance
- Pension contribution
- Unemployment insurance

Ordinary employment = automatically all insured

Unemployed receiving unemployment payments =

Health insurance, accident insurance and pension insurance

People in pension = health insurance and accident insurance

Low income (2020 under € 460,66) = only accident insurance!

Working in Times of Corona

What do I need to know?

1. Infection and quarantine
2. Job and Corona
3. Short-Time Work
4. Protection at Work

I am positive (infected)

- **I think I have COVID-19 because I am sick and have the symptoms:**
 1. First „normal“ sick leave → call your doctor
 2. Do the COVID-19 Test
 3. If test positive: you go into quarantine
 4. If test negative: stay on sick leave (normal sick leave)
 5. Request a quarantine notice from the Health Department Authority
 6. Send a copy of the quarantine notice to your boss
 7. After quarantine (10 days) and if healthy inform employer to return to work

I am positive (infected)

- **I have COVID-19 because I am tested positive but I have no symptoms:**
- Inform your employer immediately
- Release from duty for important reasons
- Health Department Authority will issue a quarantine notice
- Check your health status

My child is in quarantine

- **My child is positive and in quarantine:**
if child is symptomatic → nursing leave
If child is asymptomatic → release from duty for important reasons
- **My child had contact with a positive tested person and has to go to quarantine:**
 - Release from duty for important reasons
 - Special care time „Sonderbetreuungszeit“

Short-Time Work - Kurzarbeit

What is Corona Kurzarbeit (short-time work)

- ✓ Reduction of work time
- ✓ Reduction of salary (10%, 15%, 20%)
- ✓ Protection against dismissal
- ✓ Employer receives financial aid from government

3 Phases:

Phase 3: Kurzarbeit started from 1. October 2020

Phase 2: Kurzarbeit started in a period from 31. May until 30. of September 2020

Phase 1: Kurzarbeit started in a period of 1. March until 31. May 2020

Corona- Kurzarbeit

- **How does Short-Time Work function?**

You as employee reduce your work time and keep your job during this crisis. You receive between 80% and 90% of what you made before the short-time work. Your salary is paid by your employer. Your employer receives financial aid from the AMS to cover the lost working hours.

Big benefit: your job is secured and employer signs waiver of right to termination

- **How to „go on Kurzarbeit“?**

The employer has to sign a written agreement either with each employee or with the works council, which represents the employees within a company

Corona- Kurzarbeit

- How much salary do I get?
- **For all Phases: The salary is calculated of what you made before the Kurzarbeit:**
- You make no more than: € 1.700,- brutto → 90% of your previous earnings.
- You make no more than: € 2.685,- brutto → 85% of your previous earnings.
- You make more € 2.686,- brutto → 80% of your previous earnings.
- For salaries over € 5.370,- brutto → no aid for employer
- Apprentices have no reduction, their salary remains 100% despite reduced work time

Corona- Kurzarbeit

How much do I work?

Your work time during Kurzarbeit has to be between 10% and 90% of the regular working hours before Kurzarbeit. Within the Kurzarbeit-period it is possible to reduce the working time up to 0% if your average working time remains according to the Kurzarbeit Agreement.

The lost hours (Ausfallsstunden) remain freetime and can be used however you like.

Do I get more paid if I work more?

All of your working hours must be paid. If you work more than what your calculated Nettoersatzrate-salary, you are entitled to the hours that exceed the netto-rate.

*The 13th and 14th remuneration: 100%
Vacation pay: 100% of your salary
Kurzarbeit has no effect on unemployment
benefits (Arbeitslosengeld) or
Kinderbetreuungsgeld*

Corona- Kurzarbeit

Protection against dismissal/notice during Kurzarbeit

- Social partners agreement
- No dismissal/notice during intact Kurzarbeit
- Retention period = 1 month
- Notice only for certain reasons (eg. operational reasons, personal reasons, approval from Labour Unions or AMS Regialbeirat)

Protection at Work

I am really scared of Corona, do I have to go to work?

- Yes. The fear of Corona alone is not reason enough to justify a leave of absence. However, your employer must ensure all possible protection measures!

What protection measures must be implemented by my employer?

1. Personal protection measures:

Minimum distance from 1-2 meters, masks, airing, hand sanitizer, etc.

2. Organizational measures:

home office, reduced working hours, reduced presence of employees at work, shift system,

3. Technical measures:

partition walls, ventilation systems, plexi glass fixtures

Protection at Work

Risk groups (COVID-19 Risikogruppe)

- Risikogruppen-Verordnung
- „COVID-19 Risikoattest“
- Right to special protection measures at work or home office
- Right to fully paid leave of absence

Important Numbers and Websites

- www.jobundcorona.at
 - www.wien.arbeiterkammer.at
 - www.ams.at
 - www.gesundheitskasse.at
 - www.sozialministerium.at
 - www.arbeitsinspektion.at
 - www.gpa.at
-
- Arbeiterkammer Arbeitsrecht: 01 501 65 1201
 - Gesundheitnummer: 1450
 - Coronavirus-Hotline der AGES 0800 555 621
 - Hotline for Risk groups ÖGK: 050 124 2020

End

Thank you for your attention!
Good luck!
All the best in 2020/2021!

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