

GMS Flash Alert

2017-033 | February 22, 2017



Austria – New Rules on Minimum Wage, Work-Time, Record-Keeping for Assignments

On 1 January 2017, Austria's "Law against Combatting of Wage and Social Dumping" (hereinafter "LSD-BG")¹ came into force. The provisions of the LSD-BG are applicable for employees assigned or hired-out from foreign countries to Austria. The LSD-BG is intended to promote "equal wage" conditions for employees. Up to now, these provisions have been stipulated in different laws.

WHY THIS MATTERS

The provisions of the new LSD-BG will require a change in behavior and procedures on the part of immigration advisers, international assignment program managers with responsibility for labor and immigration-related matters tied to assignees coming to Austria to work, and the Austrian-inbound employees themselves.

Failure to act in compliance with the new rules could result in the application of penalties, not to mention unwanted attention on the "offending" company or employee.

What the LSD-BG Does

Under the LSD-BG, the following Austrian employee-related wage and benefits, notification, and documentation requirements have to be met (with some exceptions):

- minimum wage rates;

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- holiday entitlements;
- working time provisions;
- notification obligations; and
- obligation to keep certain documents ready for presentation.

Basically, the above-mentioned provisions are applicable for any kind of activity performed in Austria. However, there are exemptions² for certain short-term, small-scale activities in Austria which are not considered to be an assignment or hiring-out of employees.

The most important exemptions are highlighted below. Please note that these exemptions are applicable for assignments only (as defined), except for the last one (temporary intra-group assignments/hiring-outs) which is also applicable for the hiring-out of employees:

- Business meetings, as long as no further services are rendered.
- Participation in seminars, as long as no further services are rendered.
- Trade fairs and events similar to trade fairs (this exemption is not applicable for preparatory and concluding work).
- Attending and participating in conferences.
- In cases involving “transit traffic,” activities by mobile employees or crew-persons in the cross-border transport of goods or passengers (starting 1.1.2017).
- Activities as an employee of internationally active groups or companies, if the employee concerned receives a monthly gross remuneration in an amount of at least 125 percent of thirty-times the daily ASVG³-maximum contribution basis. In 2017, this amounts to €6,225 per month (starting 1.1.2017).
- Temporary intra-group assignments or hiring-out of especially qualified employees for the maximum of two months per calendar year, as long as the work in Austria is for purposes of research and development, planning of project work, holding of a training, or otherwise for purposes of exchanging experiences, consulting the company, controlling or participating in a cross-border group-department with management and planning functions (starting 1.1.2017). As mentioned above, this is the only new exemption which is also valid for hiring-out of employees. Please note, that the exemption is only applicable for the LSD-BG, in contrast, the Austrian “Temporary Work Act” (*Arbeitskräfteüberlassungsgesetz – AÜG*) is still applicable.

If the employee renders one of the activities mentioned above, the provisions above-mentioned are not applicable (minimum wage rates, notification obligations, etc.). Please note, that until 31 December 2016, these exemptions were applicable only if no service contract had been concluded between the foreign employer and a domestic recipient of services. If there was a service contract, only the minimum wage provisions and the holiday entitlements were not applicable. Starting on 1 January 2017, it is irrelevant if a service contract has been concluded or not.

There is one further exemption for work in connection with the delivery of operating equipment produced by the employer or a company linked in a group with the employer: assembly, start-up operations, training, repair, and servicing (servicing, though, only from 1 January 2017 onwards). If such work cannot be carried out by domestic employees and the duration of the activity in Austria does not exceed eight days, the minimum wage provisions and the provisions regarding holiday entitlements are not applicable. If the work lasts longer than eight days, but no longer than three months, the holiday provisions have to be respected, but the minimum wage provisions are not applicable.

Minimum Wage

Basic Principles

Employees working in Austria are at least entitled to the statutory remuneration (laid down by law, decrees, or collective agreements), which is paid to comparable employees of comparable employers at the place of work (for instance, the minimum wage). Typically the Austrian minimum wage/salary is regulated by collective agreements and minimum wage rates. Employees hired-out to Austria are entitled to "reasonable" payment which is deemed normal for their respective area/sector. The remuneration is considered to be reasonable if it corresponds at least to the collectively-agreed remuneration or the legally-established payment received by comparable employees for comparable work in the same company.

Only remuneration components (which are "non-contributory" according to Section 49 para 3 of the Austrian "General Social Insurance Act" (*Allgemeines Sozialversicherungsgesetz - ASVG*)), are excepted from the minimum wage controls. Moreover, remuneration components, which are only due according to the individual employment contract or company agreements, are also excepted from the minimum wage controls.

The minimum wage controls cover, in particular, the following remuneration components:

- basic salary/basic wage;
- over-time payments;
- bonuses;
- surcharges;
- special payments;
- "idle-time" compensation.

The basic salary for white-collar workers is usually due in two parts, on the 15th and on the last day of each month. However, employees and employers usually agree that the due date is only the last day of each month. For blue-collar workers, the due date is usually laid down by the applicable collective agreement. If the collective agreement does not stipulate a due date, the basic wage for blue-collar workers paid by the hour is due at the end of each calendar week; for any other blue-collar worker, the due date is usually at the end of the calendar month.

Remuneration for over-time is usually due in the month in which the over-time has been rendered.

KPMG NOTE

However, if the collective agreement does not provide different rules, it would be advisable to agree the due date at the earliest one month after the over-time has been rendered.

In the case of a cross-border assignment, special payments (e.g., holiday and Christmas remuneration) have to be paid on a pro-rata basis for the respective wage period (therefore, usually monthly), even if the applicable collective

agreement lays down the payment of a total amount on another date. Starting on 1 January 2017, this provision is also applicable in cases of cross-border hiring-out of employees.

Penalties for Under-Payment

Up to 3 employees:

- from €1,000 up to €10,000 per case
- in case of recurrence, from €2,000 to €20,000.

More than 3 employees:

- from €2,000 to €20,000 per case
- in case of recurrence, from €4,000 to €50,000.

Where there is continuous under-payment over a number of remuneration periods, this is considered to be one single under-payment. If there are several single remuneration periods with under-payment and between them remuneration periods with no under-payment, each of the remuneration periods with under-payment is considered to be an "independent" under-payment and therefore the fines might multiply.

Notification Obligations

The assignment or hiring-out of employees to Austria by an employer based in a state of the European Union (EU) or European Economic Area (EEA) or Switzerland for the performance of work or rendering of a service must be reported prior to commencement of work to the Central Coordination Office for the Control of Illegal Employment at the Federal Ministry of Finance via the appropriate form (ZKO 3 or ZKO 4). (Until 31 December 2016, the ZKO 3/ZKO 4 forms had to be filed at the latest one week prior to commencement of work.) For this purpose, **only** the electronic forms, provided by the Federal Ministry of Finance may be used.

You can find the ZKO 3 form under the following link:

<https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeacc34a476f8d&pn=B721d3a1bda1e4750953b05caa085a925&lang=en> .

You can find the ZKO 4 form under the following link:

<https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeacc34a476f8d&pn=Ba0ce23cd61e146a1a0b9986cf4801d8e&lang=en> .

For assignments or hiring-out of employees to Austria by employers based in third countries (non-EU/EEA/Switzerland), the LSD-BG does not provide for any notification obligations. In such cases, other notifications or permissions (e.g., according to the Temporary Work Act or the "Employment of Foreigners Act") may be necessary.

Penalties

In case the notification via the corresponding form (ZKO 3 or ZKO4) is not submitted at all, too late, or incomplete, or the notification is knowingly incorrect, fines can apply:

- from €500 up to €5,000; in case of recurrence, from €1,000 up to €10,000 per case (until 31.12.2016);
- from €1,000 up to €10,000; in case of recurrence, from €2,000 up to €20,000 per case (starting with 1.1.2017).

Keeping Wage and Registration Documents Ready for Presentation

The following documents have to be kept available in the German language at the Austrian place of work:

– Wage/salary documents (in case of an assignment, the foreign employer is obliged to keep them available; in case of a hiring-out, the Austrian lessee is obliged to keep them available):

- employment contract or the so-called “Dienstzettel,” which is only a short form of the employment contract (this is the only document, which can also be provided in English);
- pay-slips;
- documentary evidence of wage/salary payment or bank transfer documents;

– Wage records:

- working time records;
- documents on wage classification.

Please note that these documents have to be kept on file during the entire period of assigning/hiring-out employees to Austria, even if the employee concerned ceased his activities in Austria.

In cases involving an assignment/hiring-out by an employer based in a state of the EU or EEA or Switzerland, the following additional documents have to be kept on file:

- A copy of the ZKO3/ZKO4 form.
- The Form A-1 (in case the employee is not subject to the Austrian social security system). As long as the A1 has not been received, it is sufficient to keep available the application form for the A1 together with a confirmation of the foreign social insurance carrier that the employee is subject to a foreign social security system.

In cases involving an assignment/hiring-out by an employer based in a third country, the following additional documents have to be kept on file:

- Permits according to the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz* - AuslBG) (e.g., work permit);
- Approvals according to the Austrian “Aliens Law”;
- In cases where employees are hired-out, the Austrian Temporary Work Act provides for an additional approval from the Trade Office, and that approval has to be kept on file as well.

Penalties

Offence	penalties until 31.12.2016	penalties starting 1.1.2017
not keeping the A1 form available	€500 – €5,000 per employee in case of recurrence: €1,000 – €10,000 per employee	in case of an assignment: €1,000 – €10,000 per employee
		in case of recurrence: €2,000 – €20,000 per employee
		in case of hiring-out of employees: €500 – €5,000 per employee in case of recurrence: €1,000 – €10,000 per employee
not keeping the ZKO 3/ZKO 4 form available at the place of work	€500 – €5,000 per employee in case of recurrence: €1,000 – €10,000 per employee	in case of an assignment: €1,000 – €10,000 per employee
		in case of recurrence: €2,000 – €20,000 per employee
		in case of hiring-out of employees: €500 – €5,000 per employee in case of recurrence: €1,000 – €10,000 per employee
not keeping the wage/salary documents available	€1,000 – €10,000 per employee in case of recurrence: €2,000 – €20,000 per employee	up to 3 employees: €1,000 – €10,000 per employee
		in case of recurrence: €2,000 – €20,000 per employee
		more than 3 employees: €2,000 – €20,000 per employee in case of recurrence: €4,000 – €50,000 per employee

FOOTNOTES:

1 *Lohn- und Sozialdumping- Bekämpfungsgesetz* - LSD-BG.

2 In the past these exemptions were stipulated in Section 7a para 1a and Section 7b para 1a of the Austrian "Employment Contract Law Adaptation Act" (*Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG*) and from 1 January 2017 onwards in Section 1 para 5 and para 6 LSD-BG.

3 *Allgemeines Sozialversicherungsgesetz* or General Social Insurance Act.

Contact us

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