

# AUSTRIA

Status: April 2015

## I. Important legal notice

This data sheet aims to give a general summary of the main provisions of substantive law applicable to terms of employment in the transposition of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very design, such a data sheet can be no more than a summary, which of necessity does not contain all relevant elements. It can in no way be construed as replacing the comprehensive legal and administrative regulations, or the applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made efforts to make them as accurate as possible. Notwithstanding this, neither the Commission nor the relevant Member States are able to guarantee that this information is always detailed, complete, accurate and current. Furthermore, its publication on the European Commission website in no way means that the Commission or its agencies assume that the provisions set out this way are in accordance with Community legislation.

## II. Legal provisions for the transposition of Directive 96/71/EC

Official publication:

### **§§ 7b – 7o of the Employment Contract Law Amendment Act [Arbeitsvertragsrechts-Anpassungsgesetz (AVRAG)]**

Federal Law Gazette No 459/1993 last amended by Federal Law Gazette I No 94/2014

### **Act on the Hiring Out of Workers [Arbeitskräfteüberlassungsgesetz (AÜG)]**

Federal Law Gazette No 196/1988 last amended by Federal Law Gazette I No 94/2014

### **Construction Workers' Leave and Settlements Act [Bauarbeiter Urlaubs- und Abfertigungsgesetz] (BUAG)**

Federal Law Gazette No 414/1972 last amended by Federal Law Gazette I No 94/2014

<http://www.bmask.gv.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/arbeitsvertragsrechts-anpassungsgesetz.pdf>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008655>

<http://www.bmask.gv.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/bauarbeiter-urlaubs-und-abfertigungsgesetz.pdf>

## III. Information regarding the legal norms applicable under the Directive

Information on legal norms applicable to enterprises that second employees to the territory of another Member State for a particular period is available from the following address:

**Liaison office:** Federal Ministry of Labour, Social Affairs and Consumer Protection, Section VII, Favoritenstrasse 7, A-1040 Vienna; postal address: Stubenring 1, A-1010 Vienna  
Mag. Erwin Rath, Mag. Claudia Lukowitsch;

[erwin.rath@sozialministerium.at](mailto:erwin.rath@sozialministerium.at)

[claudia.lukowitsch@sozialministerium.at](mailto:claudia.lukowitsch@sozialministerium.at)

Tel: 0043/1/71100/6394 or 6275,

Fax: 0043/1/71100 2190

[http://www.sozialministerium.at/site/Arbeit/Arbeitsrecht/Grenzueberschreitende\\_Entsendung\\_oder\\_Ueberlassung\\_in\\_der\\_EU/](http://www.sozialministerium.at/site/Arbeit/Arbeitsrecht/Grenzueberschreitende_Entsendung_oder_Ueberlassung_in_der_EU/)

Homepage: <http://www.sozialministerium.at>

Further information about the relevant collective agreements can be obtained from:

[http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV\\_0](http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV_0)

and

- Austrian Economic Chambers (WKÖ)

Tel: 0043/1/990900,

Home page: [www.wko.at](http://www.wko.at)

<https://www.wko.at/Content.Node/Dienststellenkontaktseite.html?orgid=152756>

- Austrian Trade Union Federation (ÖGB)

Tel: 0043/1/53444\_0

[oegb@oegb.at](mailto:oegb@oegb.at)

Home page: [www.oegb.at](http://www.oegb.at)

[http://www.mitgliederservice.at/cms/S06/S06\\_50.12/kontakt](http://www.mitgliederservice.at/cms/S06/S06_50.12/kontakt)

#### **IV. Cases of non-observance of terms of employment**

Cases of the non-observance of the applicable terms of employment in Austria, and cases of suspected illegal trans-border activities can be reported to the following office:

Reports of suspected illegal trans-border activities can be reported to the Central Coordinating Office for the Control of Illegal Employment pursuant to the Foreigner Employment Act and the Employment Contract Law Amendment Act (ZKO) at the Federal Finance Ministry.

Federal Ministry of Finance: Central Coordinating Office for the Control of Illegal Employment

Address: Brehmstrasse 14, 1110 Vienna

Tel: 0043 50233 -554726, 554499, 554386

Fax: 0043 50233-5954194

e-mail: [post.finpole-zko@bmf.gv.at](mailto:post.finpole-zko@bmf.gv.at)

<https://www.bmf.gv.at/betrugsbekaempfung/entsendung-zentrale-koordination/entsendemeldungen-zentrale-koordinationsstelle.html#headline61>

#### **V. Existence of a posting [Article 1 of the Directive]**

§§ 7b to 7o of the Employment Contract Law Amendment Act AVRAG apply to employees who are posted to Austria by an employer in order to work.

The Act on the Hiring Out of Workers [Arbeitskräfteüberlassungsgesetz (AÜG)] applies to the employment of workers who are hired out to work for third parties (contract work).

### **Characteristics of posting**

- Employer with headquarters outside Austria (“posting undertaking” in the “posting state”).
- Intention to provide services or other services in return for payment in Austria under the responsibility of that employer.
- Performance of that service in Austria by a worker who travels to Austria for that purpose (“posted worker”).
- The worker has an employment relationship with the employer and his/her place of work is not usually in Austria. The employment relationship therefore has its focus outside Austria, which is where it remains while the service is being provided in Austria.
- The performance of the service in Austria requires the worker to carry out work; the work is carried out over a limited period and is therefore temporary.
- If a contracting party with an undertaking based in Austria exists with respect to provision of the service, the posted worker is not incorporated into the undertaking of this Austrian contracting party.

**A posting does not exist** with respect to the short-term and small-scale work listed in § 7a(1)(a) AVRAG which is not associated with economic competition, e.g. participation in meetings, seminars, work at trade fairs, visits to congresses, participating in and organising international sports events, but not including preliminary and follow-up work and the serving of food and drinks.

### **Characteristics of hiring out (contract work)**

- The worker carries out the work which is contractually required not for his employer but for a third party (i.e. the third party employer)
- The worker is assigned by the third party employer to perform tasks in the third party’s establishment.
- The worker is incorporated into the third party employer’s establishment for the duration of the work and is subject to the third party employer’s supervision.
- The worker is required to follow the instructions of the third party employer.
- The work does not produce any products or services which may be differentiated from other products or services of the third party employer.
- The worker does not perform the work largely with tools and material provided by the hiring agency.
- The hiring agency has no liability for the success of the work provided.

## **VI. Posted workers [Article 2 of the Directive]**

Directive 96/71/EC applies to workers who for a limited period carry out their work in the territory of a member state other than the member state in which they normally work.

In Austria, a worker is considered to be anyone who, in the context of an employment relationship, is obliged to carry out work for their employer, irrespective of their qualifications in their country of origin.

### **Key features of an employment relationship:**

- Inclusion of the employee in the organisational system of the enterprise (personal dependence of the employee).
- A personal duty to work under the guidance and leadership of the employer using his work equipment.
- Determination of the work by another party, with the economic benefits going to the employer.
- A temporal relationship of obligations between the parties to the contract.
- Duty of personal care and good faith between the parties to the contract.

It should be noted that if a professional activity in Austria can no longer be regarded as temporary, taking into account the above criteria, but as a fixed and continuous employment, the **entirety** of the binding applicable Austrian legislation applies.

### **VII. Work Periods and Rest Periods [Article 3(1)(a) of the Directive]**

**Employment Act 1969 [Arbeitszeitgesetz 1969]** Federal Law Gazette No 461, last amended by Federal Law Gazette I No 94/2014 and

**Rest Periods Act [Arbeitsruhegesetz]** No 144/1983, last amended by Federal Law Gazette I No 91/2014

<http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/arbeitszeitgesetz.pdf>

<http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/arbeitsruhegesetz.pdf>

also apply to workers posted or hired from abroad.

Furthermore, under the Austrian transposing law, a posted worker is entitled to the **working times agreed to under collective agreements** being complied with.

These collective agreements can be seen on an industry-by-industry basis on the WKÖ / ÖGB home page.

[http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV\\_0](http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV_0)

In principle, normal working time may not exceed 8 hours per day and 40 hours per week. With overtime, the time worked on any one day may not exceed 10 hours, and the working week may not be prolonged by more than 10 hours.

Overtime attracts a supplement of 50% of the wages or equivalent time off.

If the hours worked in one day are more than 6, it should be interrupted by a rest period of at least 30 minutes.

A weekly rest period must consist of 36 continuous hours.

Any divergences from these basic rules are set out directly in the Act, or are permissible within certain limits under a collective agreement.

### **VIII. Paid annual leave [Article 3(1)(b) of the Directive]**

#### **Posting to another country:**

##### **§ 7b (1), subparagraph 2 AVRAG**

Posted workers are entitled to paid leave under **§ 2 of the Leave Act [Urlaubsgesetz]**, if the length of leave in the home country is less. At the end of the posting, the worker will receive a portion of the difference between the higher leave entitlement under Austrian law and the leave entitlement under the laws of the worker's home state.

According to **§ 2 of the Leave Act 1976**; Federal Law Gazette No 390 last amended by Federal Law Gazette I No 3/2013, paid leave is equal to 30 working days (25 working days), and 36 working days (30 working days) as of the 25th year of employment.

<http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/urlaubsgesetz-text.pdf>

#### **Hiring out of workers in another country:**

##### **§ 10a Act on the Hiring Out of Workers [Arbeitskräfteüberlassungsgesetz (AÜG)]**

Workers hired out to Austria from abroad are entitled to paid leave under **§ 2 of the Leave Act** without prejudice to their rights under their contract of employment for the duration of the hiring out arrangement, if the length of leave according to the laws of their home state is less. At the end of the hiring out arrangement, this worker will receive a portion of the difference between the higher leave entitlement under Austrian law and the leave entitlement under the laws of the worker's home state.

#### **Inclusion in the Austrian leave fund process for the construction industry**

##### **§ 33d ff BUAG**

Workers who are posted or hired out from other countries who work in construction within the meaning of the BUAG, are included in the Leave Fund Procedure of the Construction Workers' Leave Fund. They are thereby placed on an equal footing with workers based in Austria. During the posting, the employer must pay wage supplements to the Construction Workers' Leave and Settlements Fund (BUAK), giving the worker entitlement to paid leave. Whilst using his leave entitlement, he may claim holiday pay (holiday pay plus a holiday supplement) from the Construction Workers Leave and Settlements Fund.

**[http://www.sozialministerium.at/site/Arbeit/Arbeitsrecht/Grenzueberschreitende Entsendung oder Ueberlassung in der EU/Urlaubskassenverfahren in der Bauwirtschaft in Oesterreich bei grenzueberschreitender Entsendung oder Ueberlassung](http://www.sozialministerium.at/site/Arbeit/Arbeitsrecht/Grenzueberschreitende%20Entsendung%20oder%20Ueberlassung%20in%20der%20EU/Urlaubskassenverfahren%20in%20der%20Bauwirtschaft%20in%20Oesterreich%20bei%20grenzueberschreitender%20Entsendung%20oder%20Ueberlassung)**

## **IX. Rates of pay [Article 3(1)(c) of the Directive]**

### **Posting to another territory:**

#### **§ 7b(1), subparagraph 1 AVRAG**

Workers posted from abroad are entitled at least to the pay that is paid to comparable workers by comparable employers for the duration of their posting under regulatory or collective agreements.

Legal provisions thus refer to the collective agreement applicable to the employment relationship. The collective agreements may be found at:

[http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV\\_0](http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV_0)

### **Cross-border hiring out:**

#### **§ 10 AÜG**

The worker is entitled to reasonable pay usual for the area, payable at least once monthly and to be confirmed in writing. The standards of collective legislation to which the poster is subject remain unaltered. In evaluating what is reasonable, the remuneration paid in the enterprise of the employee to comparable workers for comparable activity payable under collective agreements or by law are taken into consideration. Moreover, account must be taken of any other binding provisions which apply to comparable workers with comparable tasks at the third party employer's establishment, unless a collective agreement is in place to which the hiring agency is subject, and unless remuneration at the third-party employer's establishment is governed by a regulation or other legislation in line with a collective agreement.

The level of remuneration which is paid must therefore be at least equivalent to the level stipulated in the collective agreement for the Austrian establishment or at least equivalent to the level of the remuneration laid down in the collective agreement for the hiring out of workers.

[http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV\\_0](http://www.kollektivvertrag.at/cs/Satellite?pagename=KV/index&n=KV_0)

## **X. Regulations on hiring out workers and for hired workers [Article 3(1)(d) and 3(9) of the Directive]**

These regulations are set out in the **Act on the Hiring Out of Workers (AÜG)** Federal Law Gazette No 196/1988 last amended by Federal Law Gazette I No 94/2014:

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008655>

The establishment which hires out the workers is subject to the following obligations:

- Provision of the following information to the workers who are being hired out:
  - ✓ name of the establishment to which they are being hired out

- ✓ what kind of work they will do and where
- ✓ what kind of risks to health and safety might the work pose
- ✓ what are the normal working hours and when will the work have to be carried out
- ✓ what kind of remuneration will be paid and according to what kind of collective agreement
- ✓ when will the hiring-out arrangement begin and how long is it likely to last
- Payment at least to the level of remuneration indicated in the collective agreement for the Austrian establishment or the remuneration indicated in the collective agreement for the hiring out of workers
- Continued payment of the remuneration in the case of ill health or accident, on national holidays in Austria and in cases where the worker is unable to work for important personal reasons
- Observance of leave entitlements under Austrian law, insofar as this is more favourable towards the worker
- Compliance with rules and regulations in Austria, in particular regarding
  - Working hours
  - Termination of the employment relationship and dismissal
  - Maternity protection
  - Protection of young workers
  - Health and safety at the workplace

## **XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]**

Under the territorial principle, the legal and administrative regulations on health, safety and hygiene at work [worker protection regulations] applicable in Austria also apply to workers posted or hired from abroad.

Worker protection regulations are regulations protecting the life, health and dignity of workers in carrying out their work. Humane working conditions and high levels of safety at enterprises reduce the costs to the national economy and to business arising from accidents at work and occupational illnesses. The legislator sets out obligations on enterprises whose observance in the enterprises is supervised by state authorities. Today the European Union sets minimum standards for worker protection, and for their control by workplace inspectors. Regulations that protect workers include

- the use of dangerous machines and tools,
- handling dangerous substances such as poisonous or flammable chemicals,
- Stress caused by working processes or other factors, e.g. noise,
- Safety equipment,
- instruction and investigations,
- the design of workplaces, premises and sanitary facilities,

Further information relating to current legislation and worker protection regulations can be found under:

<http://www.arbeitsinspektion.gv.at/AI/Service/Publikationen/default.htm>

**XII. Regulation of work and employment conditions for pregnant women and women giving birth [Article 3(1)(f) of the Directive]**

**The Maternity Protection Act [Mutterschutzgesetz]** Section 3, Federal Law Gazette No 221/1979 last amended by Federal Law Gazette I No 138/2013

[http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/mutterschutzgesetz\\_1979.pdf](http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/mutterschutzgesetz_1979.pdf)

The Maternity Protection Act also applies to workers posted or hired out from abroad.

Pregnant women are entitled to leave for 8 weeks before and 8 weeks after birth. Pregnant women may also not attend work if a medical certificate states that continuing to work would endanger the life or health of the mother or the child. Pregnant women and women who have recently given birth are basically forbidden to work on night shifts, at weekends, on holidays, or to do overtime.

**XIII. Regulation of working conditions for children and young people [Article 3(1)(f) of the Directive]**

**Federal Act on the Employment of Children and Young People**, Federal Law Gazette No 599/1987 last amended by Federal Law Gazette I No 138/2013

[http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/kinder- und jugendlichen-beschaeftigungsgesetz\\_1987.pdf](http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/kinder- und jugendlichen-beschaeftigungsgesetz_1987.pdf)

The Federal Act on the Employment of Children and Young People also applies to workers posted or hired out from abroad.

Children, that is to say minors up to the age of 15 may not in principle be employed. Young people up to the age of 18 are subject to a legally restricted work permit.

**XIV. Equality of treatment between men and women and other provisions on non-discrimination [Article 3(1)(g) of the Directive]**

**Equal Opportunities Act [Gleichbehandlungsgesetz]** Federal Law Gazette No 66/2004 last amended by Federal Law Gazette I No 107/2013 and the

**Act on the Equality Commission and the Equal Opportunities Office**, Federal Law Gazette No 108/1979 last amended by Federal Law Gazette I No 107/2013.

<http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/gleichbehandlungsgesetz.pdf>

<http://www.sozialministerium.at/cms/site/attachments/5/8/1/CH2142/CMS1272017449498/gleichbehandlungskommissions- und gleichbehandlungsanwaltschaftsgesetz.pdf>

Both these Acts also apply to workers posted or hired out from abroad.

It is forbidden to discriminate against anybody on grounds of their sex, ethnicity, religion, world view, age or sexual orientation, directly or indirectly, in:

- Access to employment
- setting up an employment relationship
- setting pay
- Further education and training measures
- promotion
- other conditions of work
- termination of an employment relationship

**Disabled Persons' Employment Law [Behinderteneinstellungsgesetz]** No 22/1970 last amended by Federal Law Gazette I No 138/2013

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008253>

Nobody may be discriminated against, directly or indirectly, on the basis of disability as regards:

- access to employment
- setting up an employment relationship
- setting pay
- further education and training measures
- promotion
- other conditions of work
- termination of an employment relationship”

## **XV. Conditions of work and employment on other matters [Article 3(10) of the Directive]**

No others.

Reference is again made to the validity of the territorial principle by virtue of questions VII, XI, XII and XIII, or under questions X and XIV by virtue of explicit legal and administrative regulations.

## **XVI. Procedural and administrative requirements**

### **Notification of the posting or hiring out of workers**

Undertakings which are based in an EU Member State or EEA country must

- no later than a week before the work begins
- notify the posting or hiring out of workers
- to the Central Coordination Office for the Control of Illegal Employment using form ZKO 3 or ZKO 4 and in electronic format.

In case of disasters, urgent works and assignments that require immediate completion, notification must take place immediately.

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

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

The details which must be included in the notification by undertakings which post workers and are based in an EU/EEA country, differ to some extent depending on whether workers are being posted or hired out.

**The notification must contain the following information**

<i>Details concerning the <b>posting of workers</b></i>	<i>Details concerning the <b>hiring out of workers</b></i>
Name, address and trading licence or nature of business of the <b>employer</b> ; VAT identification number	Name and address of the <b>hiring agency</b>
Name and address of the <b>persons</b> authorised to <b>act as the employer's external representatives</b>	Name and address of the <b>persons</b> authorised to <b>act as the hiring agency's external representatives</b>
Name of the <b>person authorised</b> by the employer to issue the posted worker with <b>instructions</b>	
Name and address of the <b>contractor in Austria</b>	Name and address of the <b>employer in Austria</b> as well as its VAT identification number and trading licence or nature of business
<b>Names, addresses, dates of birth, social insurance numbers, competent social insurance institutions and nationality</b> of the workers who have been posted or hired out	
<b>Start of the working relationship with the employer</b>  Total <b>posting period</b> and <b>start and likely duration of the employment of the individual workers in Austria</b>  Duration and location of the agreed <b>normal working hours</b> of the individual workers	<b>Start and likely duration of the employment</b> of the workers hired out to the third-party employer
<b>Places of employment (places of deployment)</b> in Austria	
<b>Level of remuneration</b> to which the worker who has been posted/hired out is entitled	
<b>Type of activity and use</b> of the worker who has been posted/hired out	
<b>Work permit in the posting State:</b> issuing authority, reference number, issue date, validity period or copy of the work permit	
<b>Residence permit in the posting State:</b> issuing authority, reference number, issue date, validity period or copy of the residence permit	

**Permissibility under trade laws**

Workers who are posted to Austria from another country may only perform work in the context of the regulated trades pursuant to § 94 of the Trade Regulations 1994 (GewO 1994) if, where the work is regulated in their home country, they are authorised in their home country to perform that work or, where the work is not regulated in their home country, they have been authorised for at least two years to perform that work or have completed relevant

specialist training. The performance of work by workers from another country must be notified in advance and in writing to the Federal Ministry of Science, Research and Economy.

Further information:

<http://www.bmwf.gv.at/Unternehmen/Gewerbe/Seiten/GewerbeausuebungdurchUnternehmenausanderenEUEWR-Staaten.aspx>

### **Notification documents to be kept available**

Employers and/or their representatives must have ready for inspection a copy of the report, and if there is no social insurance for the workers in Austria, documents for registering the worker for social security (social security document A1) at their place of employment in Austria.

Where the work performed by the posted worker requires official authorisation in the country in which the employer is based, this authorisation must also be kept available.

### **Pay documentation to be kept available**

Employers and/or their representatives are also required to keep available those documents relating to pay which are necessary for determining the remuneration due to the worker under Austrian law. They must be kept available in German for the duration of the employment at the place of work/deployment in Austria. Where a worker from another country is hired out, this obligation is incumbent on the third-party employer.

These documents include:

- the employment contract or a written record of its content
- pay slips, proof of payment of wages by the employer or bank transfer statements
- pay records
- working hours records
- documentation concerning pay grades

### **Controls**

The entities which comprise the contributions authorities (namely the financial police (*Finanzpolizei*)) as well as, on building sites, employees of the Construction Workers' Leave and Settlements Fund (BUAK) and the agencies of the Labour Inspectorate, which monitor compliance with health and safety rules) are entitled to access the workplace in Austria, to request information, to check that the documents are kept available and to make copies of such documents.

In the case of workplaces which vary in the course of the day, the documents are to be kept at the first place of work. If a check is carried out at one of the other workplaces, the documents must be demonstrably forwarded to the inspection body within 24 hours.

### **Verification of remuneration**

Verification of the remuneration and corresponding grading to which workers who are posted or hired out to perform work in Austria are entitled under laws, regulations or collective agreements is carried out but the Skills Centre to Combat Wage and Social Dumping [*Kompetenzzentrum Lohn- und Sozialdumping Bekämpfung (Kompetenzzentrum LSDB)*], with the facts of each case being determined by the agencies of the contribution authorities.

If the LSDB ascertains, on the basis of the findings of the agencies of the contribution authorities, that the level of remuneration to which the workers are entitled under laws, regulations or collective agreements, with due regard to the corresponding grading criteria, is not paid (wage dumping), it must report this to the competent district administrative authority.

Regarding corrections to grading, the LSDB can conduct a hearing of the parties to the relevant collective agreement (§ 7e(4) AVRAG). The parties to the collective agreement must in any case be heard if the employer raises reasoned objections to the grading accepted by the LSDB.

If the remuneration shortfall is small or if the employer owes only a small amount, the LSDB is required, pursuant to § 7e(5) AVRAG to refrain from reporting this if the employer pays the employee the remuneration to which he is entitled.

Shortfalls in pay in the construction sector may also be monitored and reported by the Construction Workers' Leave and Settlements Fund (BUAK) as well as the LSDB. The BUAK's monitoring powers are laid down in the Construction Workers' Leave and Settlements Act (BUAG).

## **Penalties**

**Failure to notify, failure to keep documentation available, failure to provide documentation** (copy of notification, form A1):

Any employer who

- fails to provide notification or notification of subsequent amendments, fails to do so on time or in full or deliberately provides false information or
- fails to keep the "notification documents" available for inspection or does not permit access to them or
- fails to submit the "notification documents" or pay documents despite being asked to do so will be committing an administrative offence and shall be fined up to EUR 5 000 per worker or up to EUR 10 000 per worker in the case of repeat offences by the district administrative authorities.

**Failure to keep pay documentation available**

Any employer who fails to keep pay documentation available will be committing an administrative offence and shall be fined up to EUR 10 000 per worker and up to EUR 20 000 per worker in the case of repeat offences and, where more than three workers are affected, up to EUR 20 000 per worker and up to EUR 50 000 per worker in the case of repeat offences the district administrative authority.

**Preventing or impeding pay verification, refusing access to documents**

Fine of up to EUR 10 000 and up to EUR 20 000 in the case of a repeat offence.

**Remuneration shortfall**

Any underpayment of the remuneration to which the worker is entitled under laws, regulations or collective agreements may be punishable by an administrative penalty:

A fine of up to EUR 10 000 per worker (and up to EUR 20 000 in the case of repeat offences). Where more than three workers are affected, a fine of up to EUR 20 000 (up to EUR 50 000 in the case of repeat offences).

### **Active regret**

The employer is not punishable if, before any investigation by the supervisory bodies, he provides evidence to show that he has paid the worker the difference between the remuneration actually paid and the remuneration to which the worker is entitled under Austrian law.

### **Refraining from imposing a penalty**

The district administrative authority must refrain from imposing a penalty for underpayment if

- the employer pays the worker the remuneration to which he is entitled by a deadline set by the district administrative authority
- the underpayment is only by a small amount
- the employer's fault does not go beyond minor negligence.

### **Prohibition of service provision**

Where more than three workers are **underpaid** or where underpayment occurs repeatedly, the district administrative authority must prohibit the employer based abroad from carrying out the activity which forms the basis of the service for at least a year; any violation of this prohibition will be punishable by a fine of between EUR 2 000 and EUR 20 000. The employer may also be prohibited from providing services where he has sought to **frustrate monitoring activities** or has **failed to make pay documentation available**.

In this regard, it must be pointed out that employers who are based in Austria and commit serious breaches of the law, including disregarding work regulations, will have their trading licence revoked (cf. § 87(1), subparagraph 3 of the Trade Regulations).

### **Temporary security**

If there is reason to suspect that an administrative offence has been committed pursuant to § 7b(8) AVRAG (failing to keep available or failing to supply the notification of posting and failing to supply documentation on the worker's social insurance registration), § 7i AVRAG (failing to make available/failing to supply the pay documentation, acting in such a way as to frustrate pay verification and, in particular, underpaying workers) or § 7k(4) AVRAG (foreign employer carrying out its activity despite being prohibited from doing so) and if it may be assumed, on the basis of particular facts, that prosecuting the employer will be impossible or made very difficult for reasons associated with the nature of the employer or hiring agency, the bodies of the contribution authority may impose a temporary security on the employer, stipulate its value and collect it and, where the temporary security is not paid, arrange for the confiscation of usable items belonging to the employer.

## **XVII. Procedure for resolving disputes**

There are no extra-judicial procedures for resolving disputes in Austrian employment law. A worker must sue his employer for any claims. Employment and social tribunals are competent for disputes arising under employment contracts. They are subject to the

Employment and Social Tribunals Law [Arbeits- und Sozialgerichtsgesetz] Federal Law Gazette No 104/1985 as amended by Federal Law Gazette I No 86/2013.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000813>

**XVIII. Information on legal remedies**

Information on the legal remedies available in Austria and a list of organisations providing legal aid can be found on the home page of the Federal Justice Ministry.