

Gig economy un-gigged: collective bargaining agreement for bike couriers

18 December 2019 | Contributed by [Graf & Pitkowitz Rechtsanwälte GmbH](#)

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Introduction

From 1 January 2020, bike couriers' employment relationships will be governed by a newly enacted collective bargaining agreement. The agreement was concluded between the Chamber of Commerce and the Austrian Union of Service Workers as the respective representative bodies for all employers and employees of this specific service sector. It applies to each employment relationship affected, regardless of workers' affiliation with a union.

Under the Austrian system of collective bargaining, the personal scope of collective bargaining agreements is determined via the mandatory membership of employers with the respective branch of the Chamber of Commerce; when obtaining a business licence, employers, by operation of law, become members of the Chamber of Commerce. If the competent branch of the chamber concludes a collective bargaining agreement for a specific business sector with their counterpart (the labour union) all employers pertaining to this branch must comply with the terms of the respective collective bargaining agreement and afford their employees the rights and benefits granted thereunder.

Workers or contractors?

The new collective bargaining agreement does not touch on the issue of whether bike couriers should be qualified as workers or contractors, but the fact that it has been concluded shows that employer organisations and unions agree that bike couriers, in many cases, should be classified as employees rather than self-employed contractors. The courts tend to narrowly define the scope of self-employment and in most cases it is accurate to conclude that bike couriers are controlled, managed and disciplined by their engagers. The courts, for instance, held more than a decade ago that using a private bike for courier services does not amount to using a person's own operating resources. Further, the courts are not convinced that a substitution clause in a contract that is never put to practice would warrant a classification of a worker as self-employed.

Therefore, a vast number of bike couriers in Austria will be covered under the terms of this new collective bargaining agreement.

Rights and benefits under new collective bargaining agreement

The status of (white-collar) employees or (blue-collar) workers already brings with it an array of statutory rights that govern issues such as:

- working time and rest periods;
- sick leave;
- annual leave; and
- notice terms.

In addition, the following rights and benefits have been introduced:

- a minimum wage of €8.71 per hour, €348.29 per week and €1,506.14 per month;
- a 13th and 14th salary instalment (ie, Christmas remuneration and holiday allowance) in the amount of the applicable monthly minimum wage;
- an allowance of €0.14 per kilometer as compensation for use of a private bike and €20 per month as compensation for the private use of mobile devices for business purposes;

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- a condition that employers must supply a helmet, rain gear, gloves and shoe covers in suitable quality;
- a 40-hour regular work week (which is identical with the statutory work week) and authorisation to introduce a four-day work week, allowing daily work hours of up to 10 hours;
- a 100% supplement for work performed between 10pm and 5am;
- a statutory supplement of 50% for overtime work and a supplement of 100% for work on public holidays;
- entitlement to paid leave for a courier's own wedding (two days), the birth of a child (two days), the death of a partner (three days), the death of a parent or sibling (two days), relocation (one day), the funeral of a grandparent or an in-law (one day) and the wedding of a child, sibling or parent (one day);
- a notice period of at least one week (if employed for up to one year), two weeks (if employed for up to five years) and three weeks (if employed for five years or more); and
- a condition that during the notice period, the employee must be granted four hours per week to find other paid employment.

Comment

Ostensibly, Austria is the first country to introduce a collective bargaining agreement for one of the better-known sectors of the gig economy. Bike couriers in Austria now enjoy similar rights and benefits as employees in other sectors.

While this is good news for bike couriers, it remains to be seen whether customers will have to pay the bill because of increased prices for courier services.

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