

2017 brings improvements for works councils and older employees

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Works councils **Dismissal challenges by older employees**

Two recent amendments to the Labour Relations Act benefit the legal status of works councils and are geared towards increasing older employees' job prospects.

Works councils

As of January 1 2017 the term of office for members of a works council has been extended from four to five years. According to lawmakers, the reasoning behind this extension is due to the increasingly complex work environment and the statutory framework that regulates it. As a consequence, works council activities have grown more demanding and require longer term continuity and tenure.

For the same reasons, works council members' entitlement to educational leave has also been extended. Previously, works council members were entitled to three weeks of educational leave with continued remuneration during their four-year term. This period has now been increased to three weeks and three days.

Dismissal challenges by older employees

Austrian legislation grants all employees protection against 'socially unjustified' termination of employment. This legal recourse regularly serves as a strong bargaining tool in case of redundancies – in particular, during a recession or weak economy.

Employees typically challenge their termination before the labour courts if the termination causes unusually detrimental consequences and hardship – for example, a longer than average period of unemployment. With respect to older employees (without specifying at what age this classification applied), the law previously provided that the employee's age and years of service with the employer should be specifically considered.

Envisaging that older employees might be discriminated against by future employers if the statutory protections were too strong, the law mandated that this specific consideration would apply only if:

- the employee challenging his or her termination was age 50 or older when his or her employment commenced; and
- the employment relationship lasted for at least two years.

The logic behind this exception was that although older employees were afforded stronger protection against socially unjustified termination than younger employees, employers would still hire them because the special protection would begin only after at least two years of service.

In reality, this was not the case. Unemployment among 50 to 65 year olds grew considerably during the past decade and the existing government pledged to change that.

Under the amended provisions, the special treatment of employees who start employment at age 50

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or older has been abolished in its entirety. At the same time, the specific protection for older employees whose employment commenced before they turned 50 years old remains unchanged. Consequently, older employees – including those above 50 years old – are still afforded privileged protection, but employers are likely to hire staff who are older than 50 years old because any express statutory protections for new hires above this age have now been removed. Based on the letter of the law, it should no longer make a difference, in relation to redundancy issues, whether employers employ someone who is 25 or 52 years old for the same job.

The new law, which will govern employment relationships that commence on or after July 1 2017, is meant as a job initiative by the Austrian government. With the changes, it is hoped that individuals older than 50 facing long-term unemployment will be able to find jobs more easily without the statutory protection that they were previously granted.

Changing the law is one thing, changing decades-old case law is another. The courts are generally reluctant to treat younger and older employees alike when it comes to challenges to a dismissal or termination. Whether the new law will change that remains to be seen.

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