

Employment & Labour - Austria

Primer on dismissals, redundancies and severance pay

Contributed by [Graf & Pitkowitz Rechtsanwälte GmbH](#)

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Dismissal

A dismissal need not be for cause, but the employer must give prior notice either under the contractual notice terms or, in the absence of agreed notice terms, under the minimum statutory notice terms. The employer need not observe any notice terms if an employee is dismissed for cause. 'Cause' is defined in the Employee Act to include (without limitation):

- severe breach of mutual duty of trust and confidence;
- incapacity to perform the agreed services;
- violation of restrictive covenants;
- contravention of the employer's instructions; or
- rude behaviour to the employer or co-workers.

Redundancy

Mass terminations require prior notification to the appropriate government employment agency, which triggers a 30-day waiting period during which any termination will be null and void. The employer is also required to consult with the works council and discuss measures to:

- avoid dismissals;
- reduce the number of redundancies;
- mitigate the consequences of collective dismissals; and
- create a social plan (a plant agreement between the employer and the works council).

The conclusion of a social plan is mandatory if a particular number of employees (roughly one-third of staff) are affected by the planned measures. In the absence of an agreement on the terms of the social plan, both the employer and the works council can call on a special judicial committee set up at the labour court.

The labour unions usually conduct negotiations on behalf of or jointly with the works council and seek to bargain for financial and non-financial benefits (eg, voluntary severance pay, outplacement assistance, specific pension schemes for older employees and personal counselling). However, formal notification of the trade union is not required.

For a redundancy to be lawful, all employees must be fairly selected, consulted and, where appropriate, offered suitable alternative employment within the organisational unit affected. Although employees have no formal rehire rights, offers of suitable alternate employment must be made by the employer to prove that it has acted in conformity with the duty to structure any terminations and lay-offs in a socially adequate manner.

An employer may make payment in lieu of notice if it dismisses an employee without notice and without cause. The employee can then bring a tort action asking for the 'front pay' (ie, all payments due until the day on which the employment relationship would end if the employer had to observe the contractual or statutory notice terms) that would otherwise have been due to him or her. The employer and employee can also agree on an earlier notice date where the employee (under the same tort theory) would typically

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claim front pay.

On an individual level, the employer must notify the works council at least five working days prior to an intended notice of termination. Failure to notify the works council renders a subsequent termination ineffective.

The following categories of employees enjoy special statutory protection against dismissal:

- pregnant women;
- parents on maternity or paternity leave;
- members of the works council;
- apprentices;
- disabled employees; and
- employees on military draft.

These employees can be dismissed only on grounds defined by law and only with the prior approval of the labour court or the competent disabled employees committee.

Severance pay

Austria has two legal regimes covering severance pay upon termination. The old system was abolished in 2002, but still applies to employment relationships that started before January 1 2003. It provides for staggered severance pay increasing with seniority (from two monthly earnings after three years of service up to one year's income after 25 years of service) if the termination of employment is not initiated or primarily caused by the employee.

This severance pay scheme proved inflexible in a changing work environment - employees were often hesitant when offered better career opportunities by prospective new employers, because they had to terminate their employment and would not receive severance pay. Prospective new employers more often than not refused to compensate for the shortfall.

The new system (in effect for all employment contracts that started after December 31 2002) mandates that employers withhold 1.53% of employees' monthly gross earnings and contribute this to an account with a professional severance pay provider (such providers are usually managed by affiliates of major banks and insurers). Severance pay providers administer a defined contribution fund and employees can shift their accrued entitlements to the different provider of a new employer, regardless of how the employment was terminated.

For further information on this topic please contact [Jakob Widner](#) at [Graf & Pitkowitz Rechtsanwälte GmbH](#) by telephone (+431 401 17 0), fax (+431 401 17 40) or email (widner@gpp.at).

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