

Employment & Labour - Austria

Knowledge imputation in employment law

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June 11 2014

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Background

Generally, Austrian law allows for imputation or attribution of knowledge to a principal (eg, an employer) where an agent (eg, an employee) is entrusted by the principal with a certain task and, in the course of performing that task, learns something about third parties that might be of legal relevance to the principal's legal relationship with them.

Knowledge imputation was developed by the courts based on the concept of vicarious liability and the legal doctrine pertaining to various statutory concepts whereby knowledge or a certain subjective state of mind plays a role in affording a legal remedy (eg, *bona fide* possession or avoidance claims under insolvency legislation). The justification for knowledge imputation lies in the split relationship between the principal and agent because, without imputation, the principal could decide after the fact whether to use an agent's knowledge in its favour or deny attribution and avoid negative legal consequences to the detriment of a third party. Therefore, to the extent that the principal deploys an agent in its dealings with third parties, the agent is deemed to be the principal with respect to the knowledge that the agent acquires.

The courts also recently recognised knowledge imputation in cases where the principal gave no legal representation powers to the agent, but merely entrusted the agent to perform certain tasks on its behalf. As a rule, only knowledge pertaining to the task entrusted to the agent will be imputed; this does not include 'private' knowledge (ie, knowledge that the agent acquired outside his or her professional tasks). If, however, the agent also holds broader, more general powers to act on behalf of the principal and could be considered a so-called 'control person', or acts in the capacity of a corporate officer with statutory representation powers, the knowledge imputed will include not only task-specific knowledge, but also 'private' knowledge.

Employment context

In the employment context, knowledge imputation can play a role where, for instance, the employer is imputed with the knowledge of a supervising employee (ie, the employer's agent) who learns of another employee's gross misconduct or material breach of contract, but fails to report it to his or her employer. In such a case, the employee breaching his or her employment contract could raise a defence arguing that the statute of limitations started to run when the supervisor first learned of the misconduct, so that a dismissal would be time barred if the employer acquired actual knowledge of such gross misconduct later. The supervisor's knowledge will be imputed to the employer in such a scenario, regardless of whether the supervisor has the authority legally to bind the employer - but only if the supervisor (according to the courts) also has some basic human resources-related competencies, including the obligation to report misconduct to the employer.

Similarly, knowledge imputation can play an important role in discrimination cases, because the employer has a duty to act once it learns of an employee's discriminatory conduct. In addition, unfair dismissal cases might be decided differently depending on whether co-workers' knowledge of potentially unfair grounds for dismissal can be imputed to the employer.

Comment

Employers must establish a functioning reporting line or risk knowledge being imputed to their detriment even where, absent actual knowledge, the employer had no chance to react to the misconduct or where employment legislation burdens the employer with an

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obligation to act.

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