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Implementation of Work-life Balance Directive and EU Whistleblower Protection Directive

GRAF ISOLA Rechtsanwälte GmbH | Employment & Immigration - Austria



JAKOB WIDNER



SARAH
MICHEUZ

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In 2023, both the EU Work-life Balance Directive⁽¹⁾ and the EU Whistleblower Protection Directive⁽²⁾ were transferred into national law. The first part of this two-part series deals with the implementation of the Work-life Balance Directive, while the second part will highlight the main changes introduced by the Whistleblower Protection Directive.

Introduction

In 2019, the Directive on Work-life Balance for parents and carers was adopted by the European Union. The core objective of the Work-life Balance Directive is to set a minimum standard concerning parental leave and parental part-time and care leave. Austrian legislation already provides for most of the legal rights now set forth in the Directive, and so, the Austrian lawmaker only had to add minor changes to a well-established legal framework already in place for several years. This Directive is intended to strengthen the realisation of equal opportunities for women and men in the labour market.

This article deals with the main amendments to Austrian labour law, most of which result from the Work-life Balance Directive.

Parental leave

Adjustment of duration of parental leave

The Directive affords each parent at least two months parental leave (article 5 (2) of Directive (EU) 2019/1158). Austrian legislation set forth in the Maternity Leave Act and the Paternity Leave Act allowed for a maximum of 24 months, and splitting of leave times among the child's parents was and still is possible. However, to increase male participation in childcare, the new rules now state that for children born after November 2023, one parent is "only" entitled to parental leave until the end of the child's 22nd month of life and not, as previously, until the 24th month. The remaining two months are meant to be filled by the other parent, which in almost all cases is the father of the child.

By way of derogation from this provision, however, a parent will continue to be entitled to full parental leave until the child reaches the age of 24 months if the parent who takes parental leave is a single parent at the time of notification of parental leave. This is the case if:

- there is no other parent;
- the other parent does not live in the same household.

The other parent is not entitled to parental leave and the employee notifies the start of parental leave at the earliest two months after the end of her employment ban. In this case the entitlement to parental leave is extended until the end of the child's 24th month of life.

Changes to deferred parental leave

There is still the option to defer up to three months of parental leave time and use this residual entitlement up at a later stage until the child reaches the age of seven. The provision was intended to allow parents some time-off once their children are starting their school life.

This framework has now been amended to facilitate its real-life application with the following adjustments if:

- no agreement is reached within two weeks of notification, the employer must justify the rejection in writing; or
- a dismissal prompted by deferred parental leave either notified or taken is prohibited and can be challenged in court.

At the written request of the employee no later than five days following the notice letter, the employer, within another five days of receipt of such a request, must explain in writing the reasons for the termination. Failure to submit the written justification, however, does not render the termination invalid. It will not bolster employer's position in subsequent court proceedings, either.

Parental part-time work

Legal entitlement to parental part-time work

Parents who notify their employer of their intention to take parental part-time work are now entitled to parental part-time work for a maximum of seven years until the child reaches the age of eight (previously until the age of seven). Periods of parental leave and times of maternity protection (at least eight weeks, and up to 12 weeks following childbirth) are to be deducted from this maximum duration.

(3)

Contractual parental part-time work without legal entitlement

In this case, parental part-time cannot be unilaterally taken, but must follow from an agreement between employer and employee (eg, in case of smaller employers with less than 20 staff), although employee can go to court and have the judge decide on an adequate part-time model if no agreement can be reached. Parental part-time may be agreed up to the child's eighth birthday, although in this case there is no maximum duration of seven years. If the employer rejects the request for parental part-time work, this must be justified in writing.

Protection against dismissal

Under current legislation, and up to the fourth birthday of the child, a parent working parental part time cannot be dismissed without the express consent of the labour court. After this four-year period, a dismissal would still be unlawful if it were for invoking the right to request continued parental part time. If such a dismissal occurs, the employer must state the reasons for the dismissal in writing if the employee so requests within five days from receipt of the notice letter. The employer must comply within five calendar days following receipt of the request.

Care leave

The previous requirement that an employee is only entitled to care leave for close relatives living in the same household has been changed so that the following people are included in the entitlement to care leave:

- close relatives no longer have to live in the same household; and
- persons living in the same household who are not close relatives (eg, flatmates).

The protection against dismissal and the obligation of the employer to state reasons upon written request by the employee also extends to care leave.

Employer's obligation to justify refusal or postponement of reduction of working hours or leave

Employers are obliged to provide a factual and written justification if they refuse or postpone:

- a reduction in normal working hours;
- carer's leave; or
- part-time carer's leave requested or applied for by the employee.

In the above-mentioned cases, the employer must also issue a written statement of reasons for the dismissal at the written request of the employee.

Suspension of expiry of limitation and forfeiture periods

The expiry of statutes of limitation and forfeiture periods relating to claims arising from the employment relationship will be tolled and can only expire two weeks after the end of any periods of parental leave or care leave.

Extension of protection against discrimination under Austrian Equal Treatment Act

The Equal Treatment Act now includes comprehensive protection against discrimination of parents and carers on leave.

For further information on this topic please contact [Jakob Widner](mailto:j.widner@grafisola.at) or [Sarah Micheuz](mailto:s.micheuz@grafisola.at) at GRAF ISOLA by telephone (+43 1 401 170) or email (j.widner@grafisola.at or s.micheuz@grafisola.at). The GRAF ISOLA website can be accessed at www.grafisola.at.

Endnotes

(1) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

(2) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

(3) The requirements for parental part-time work are:

- at least three years of uninterrupted service;
- a company with more than 20 employees; and
- the normal weekly working time must be reduced by at least 20% and may not be less than 12 hours per week, whereby the last point also applies to the agreed part-time parental leave between employee and employer.