

Austria

Introduction

Industrial relations and labour law in Austria are characterized by a high degree of centralization and a strong tendency towards compromise. Several bodies represent the employees. The Austrian Trade Union Federation (“*Österreichischer Gewerkschaftsbund*” – “*ÖGB*”) is the most influential Austrian employees’ representation organization and is regarded as one of the most highly centralized trade unions in the western world. The Austrian Trade Union Federation normally negotiates the collective bargaining agreements and has a large influence on Austrian wage policies. Membership is voluntary.

Membership in one of the existing chambers of employees (“*Kammer für Arbeiter und Angestellte*”) is obligatory for all employees, except for those working in public services or holding a management position in private business. The chambers act as think tanks and sounding ports for the union movement. They take part in the legislative process and act as a service organization for employees. They provide free labour law advice and support for legal representation before the labour courts.

The leaders of employer and employee organizations have a close working relationship and there are, as a result, almost no strikes or lock-outs in Austria. This so-called “social partnership” (“*Sozialpartnerschaft*”) has gained a reputation throughout the world as an effective means of successful cooperation between employers and employees.

The primary piece of legislation in this area is the “*Arbeitsverfassungsgesetz*” (Labour Constitution Act).

Trade Unions

Employees have a right of freedom of association and the right to engage in union activity. Since the establishment of the ÖGB, all political viewpoints and groups of employees have been represented within it. However, there is no direct trade union representation in the workplace. Instead, employees are represented by statutorily elected Works Councils.

The Labour Constitution Act gives legal authority for collective bargaining agreements. Collective bargaining agreements are usually put in place for particular industries

or branches of industries and are usually concluded by the trade union representing the employees' side and the Austrian Chamber of Commerce ("*Wirtschaftskammer*") representing the employer's side.

Works Councils

The employees are represented in the workplace by statutorily elected Works Councils. Under the Labour Constitution Act, if a business permanently employs at least five employees who are at least 18 years old, a Works Council has to be established. However, the establishment of a Works Council is a right of the employees and does not trigger any obligation in the employer to establish an employer Works Council. The Works Council has to represent the interests of the employees against the owner of the business. If the minimum number of employees is reached, they can form a works assembly ("*Betriebsversammlung*"), consisting of all employees of the business, and elect the Works Council by way of a secret vote. This works assembly can be held in the business and during working hours, provided it is reasonable for the owner. The number of persons to be elected to the Works Council increases with the number of employees. For example, there will be one member of the Works Council for five to nine employees. For 10 to 19 employees, the Works Council consists of two members; from 20 to 50 employees, three members; from 51 to 100 employees, four members. For businesses with more than 100 employees, for every additional 100 employees another member is added to the Works Council. For businesses with more than 1,000 employees, for every additional 400 employees another member to the Works Council is added. Depending on the size of the business, further procedures are required to determine the members of the Works Council. A chairman who is to represent the Works Council vis-à-vis the owner is elected from all members of the Works Council. The Works Council is established for a term of four years.

Rights Of Participation Of The Works Council

General Right To Participate And To Obtain Information

The Works Council is entitled to supervise compliance with the laws relating to employees within the business. For this purpose, the Works Council may inspect the records kept in the business on the remunerations of employees and the calculation of the remuneration, as well as all other documents concerning employees. Once every quarter, or once a month if the Works Council so requests, the owner shall deliberate with the Works Council, informing it on important matters of the business.

The Works Council has the right to request that the owner remove irregularities and carry out the necessary measures.

The employer is required to notify the Works Council on the types of computer-assisted records existing on employees and identify data proposed to be processed and transmitted. The Works Council must be able to verify this information if it so requests.

Participation In Social Matters

The Works Council has a comprehensive right to obtain information and deliberate on all matters of health and safety protection. It may participate in the management of in-house training and educational facilities and welfare facilities. The form and scope of these participation rights can be set forth in a shop agreement.

Participation In Personnel Matters

In personnel matters, the Works Council has a say in connection with the recruitment of new staff, the determination of remuneration in a particular case, relocations, disciplinary measures, the allocation of company residences, and promotions.

Recruitment And Relocation Of Employees

The Works Council may propose to the owner the advertisement of vacancies. The owner in turn has to inform the Works Council of the number of employees to be hired and of the jobs they are supposed to do at the workplace. On request by the Works Council, deliberations may be held on individual hiring.

The employer must notify the Works Council of each hired employee, indicating his or her remuneration, the type of work he or she will do, and the salary scheme to which he or she will be allocated.

Any assignment of an employee to another workplace, which is supposed to last at least 13 weeks, is deemed to constitute a relocation. The employer must promptly notify the Works Council of every relocation. If any relocation entails a reduction of the remuneration or the worsening of other working conditions on a lasting basis, it is legally effective only with the prior consent of the Works Council, even if the employee himself or herself accepts that his or her working conditions change for the worse. Should the Works Council refuse to give its consent, the employer may sue for such consent in court. The competent labour court will approve the relocation if it is objectively justified.

Imposition Of Disciplinary Measures

Disciplinary measures may be imposed on an individual employee only if a collective agreement or shop agreement so provides and if they are approved in a particular case by either the Works Council or any body established with the consent of the Works Council (for example a disciplinary commission). Any disciplinary measure which was imposed without the consent of the Works Council is ineffective. The employee has the right to have the form or substance of any disciplinary measure reviewed by the court.

Termination And Dismissal Of Employees

The owner of the business has to notify the Works Council prior to giving notice to an employee. Within five working days, the Works Council can either object to, not comment on, or approve the proposed termination. If notice is given without notification of the Works Council or within the time limit granted for comments, it is ineffective.

The owner has to notify the Works Council immediately after an employee's dismissal and, on request of the Works Council, has to consult with the Works Council on this dismissal within three working days from notification.

Participation In Concluding Shop Agreements

Shop agreements are agreements concluded between the Works Council and the owner. They must be made in writing and can regulate the matters which either the law or collective bargaining agreements specifically reserve to shop agreements. The terms of a shop agreement must neither violate mandatory statutory law nor mandatory collective labour law and must be posted in the company.

Necessary shop agreements: They exist if the owner may take certain measures only if a shop agreement is available and has been agreed upon. These measures would include the introduction of an internal disciplinary code, staff questionnaires, certain control measures affecting a person's dignity, and piece-work pay. Should the Works Council not approve the proposed shop agreement, the owner cannot take the proposed measures, and the employee may refuse compliance.

Necessary enforceable shop agreement: Computer-aided personal data systems and personnel evaluation systems must neither be introduced nor used without the consent of the Works Council. Should the Works Council refuse

to approve the proposed shop agreement, the owner may refer the case to the conciliation board (“*Schlichtungsstelle*”) whose decision can replace the Works Council’s consent.

Enforceable shop agreement: In certain matters (e.g., use of in-house facilities, etc.), both the owner and the Works Council can force approval of a shop agreement by referring the case to the conciliation board for decision.

Voluntary shop agreement: The Labour Constitution Act enumerates a number of matters which can be regulated by shop agreement on a voluntary basis (e.g., company pensions). All these matters have in common that the Works Council cannot enforce their incorporation into a shop agreement.

Participation In Alterations Of The Company

The owner is obliged to notify the Works Council of a proposed alteration within the company timely enough for the Works Council to deliberate on its structure. Alteration includes any limitation of operation, shut down or relocation of the company, merger with other companies, or change of the business purpose or organization.

The Works Council may propose measures to minimize any negative consequences for the employees arising from the change to the business. If the business has more than 20 employees and the change is detrimental for all or a substantial number of them, the employer and the Works Council may agree on a social plan in order to minimize such detrimental consequences for the respective employees. If the employer and the Works Council cannot agree on a social plan, the Works Council may address a special conciliation body (*Schlichtungsstelle*) at the competent labour court. In this event, the *Schlichtungsstelle* is entitled to decide the terms of a social plan after hearing the employer and the Works Council on the matter.

Participation In Economic Matters

Rather strict limits are imposed on the Works Council’s participation in economic matters; under certain circumstances, the Works Council may take one third of the seats in the supervisory boards of stock corporations. In companies with limited liability with more than 300 employees, a supervisory board is mandatory, thus allowing participation of the Works Council’s members.

Works Council Employee Protection Rights

The members of the Works Council must neither be subject to restrictions nor discrimination in pursuing their activities, and they enjoy special protection against notice and dismissal. Thus, members of the Works Council can only be terminated with prior approval by the labour court, provided that certain reasons for the termination are met (e.g., closing of the business).