WIRTSCHAFTSKAMMERN ÖSTERREICHS

ARBEIT & SOZIALES

HIRING PERSONNEL – BUT THE RIGHT WAY!

March 2024

Introduction

A large number of legal and collective-agreement provisions have to be observed when hiring personnel. One small mistake can quickly have adverse and, often, also very costly consequences for the employer.

That is why it is especially important to deal in good time and in depth with the most important issues that arise when establishing an employment relationship, in order to avoid unnecessary problems as much as possible.

This brochure summarises the relevant labour-law provisions. It is intended to provide you with step-by-step assistance when you take on employees.

Before you hire an employee, be sure to consider the following basic questions:

- Which important rules concerning equal treatment must be borne in mind in the job advertisement?
- Which questions can be asked at the interview and which topics should be avoided?
- When do interview expenses arise and how can they be avoided?
- What must be taken into account when employing foreign nationals?
- What form of employment is planned? Blue collar or white collar, holiday intern or holiday employee?
- Is an apprentice to be trained?
- Which collective agreement applies to the employment relationship?
- What is the content of an employment note and how is it different from an employment contract?
- What are the advantages of a trial period?
- What needs to be considered when concluding a fixed-term employment contract?
- What regulations must be observed when registering for health insurance?
- When is the employment marginal?
- What details must be included in the payroll account?

In the appendix to this brochure, you will find the current contribution bases and contribution rates for employees in 2023, as well as many useful links for employers.

Further detailed information and tips, plus samples and forms relating to labour and social law can be found underhttps://www.wko.at/arbeitsrecht/start.

Table of Contents

1. Equal treatment in job advertisements and staffing

1.1. General

The Equal Treatment Act prohibits discrimination based on

- gender,
- ethnic affiliation,
- religion,
- ideology,
- age and
- sexual orientation.

The Disability Employment Act also regulates the prohibition to discriminate on the grounds of disability, irrespective of the degree of that disability (even if the disability is less than 50%).

1.2. Equal treatment in relation to a specific employment relationship

Because of the ban on discrimination, no one may be discriminated against directly or indirectly, including in the case of

- establishment of the employment relationship or
- the specification of remuneration.

Caution!

This means that job advertisements, selection procedures and the resulting recruitment must in principle be non-discriminatory.

Example:

A job advertisement with the wording "Male truck driver, maximum 35 years old, with perfect knowledge of German wanted" is discriminatory on several levels.

In addition to the discriminatory references to gender and age, the requirement for perfect German is discriminatory because it is likely to discourage job applicants who are not native speakers of German. However, perfect knowledge of German is not required for a truck driver.

1.3. Consequences of breaching the principle of equality

1.3.1. Non-discriminatory job advertisement

The first infringement of the requirement for non-discriminatory job advertisements will incur a warning from the district administration authorities; further infringements will incur a fine of up to € 360,-.

1.3.2. Non-establishment of an employment relationship

If an employment relationship is not established because of an infringement of the ban on discrimination, compensation is due for the financial loss plus damages for the personal disadvantage suffered. The claim for compensation amounts to

- at least two months' pay if the job applicant had been appointed to the position on a non-discriminatory basis or
- up to € 500,- if the employer can prove that the damage from the discrimination only consisted of a refusal to consider the application.

The claim can be asserted by the job applicant within six months of rejection of the application.

Tip!

After the interview, try to note down the main content of the interview and also work out the easily verifiable factual arguments for and against the successful application.

1.4. Minimum remuneration in job advertisements

1.4.1. General

Since 1 March 2011, job advertisements must contain details of the minimum remuneration. This obligation applies to

- employers,
- private employment agencies and
- persons entrusted under public law with the provision of employment services.

1.4.2. Definition of a job advertisement

The term "job advertisement" covers internal ("on notice board") and external (in newspapers, on the internet, etc.) publications in which a specific position is advertised.

General references such as "We are hiring..." or invitations to "get to know each other" do not fulfil the concept of a job advertisement unless a specific job is envisaged.

1.4.3. Minimum remuneration

The job advertisement must specify the minimum remuneration for the position described, based on collective bargaining agreements or laid down by law or other standards.

This information

- must state the amount
- with the unit of time (hour/week/month)
- without pro-rata special payments
- including personal bonuses that are already known at the time the announcement is made (e.g. for foremen).

Caution!

Since 1.8.2013, details of the minimum remuneration must also be given by companies for which no salary-defining provisions such as collective agreements, minimum remuneration rates, or declarations in the articles of association or genuine work agreements apply (except for executives with a significant influence on corporate management).

The employer may refer in the job advertisement to its readiness to pay in excess of the collectively agreed amount.

Caution!

If the employer does not guarantee remuneration in excess of the collectively agreed amount, despite having announced its willingness to do so, there is a risk that the applicant, on the basis of age, gender or other discriminatory element, may assert a claim for payment of the difference and for compensation for the personal disadvantage suffered.

There is also an obligation to indicate the minimum remuneration in advertisements for part-time and limited-time positions.

Tip!

It is sufficient to mention a "salary/remuneration from € .... gross" with the collectively agreed minimum remuneration.

Not mandatory are:

- details of the collective agreement to be used,
- consideration of additional classification criteria (length of service and work experience) unless a professionally experienced person is explicitly sought,
- inclusion of work-related bonuses if they vary in amount, as is also the case for tips.

Sample formulations:

"We are looking for ... at € ... gross per month"

"Remuneration: € ... gross/hour, payment in excess possible"

"For this position, we can offer you market-rate gross monthly remuneration of € ... gross to € ... gross, depending on specific qualifications"

" ... wanted; remuneration in excess of collectively agreed amount from € ... gross"

"Negotiable: € ... gross per month with readiness to pay in excess of this amount".

Tip!

If the employer accepts an applicant although he/she has lower qualifications than those required in the advertisement, an agreement to pay lower remuneration - covered by the collective agreement - is permitted if the position occupied or at least its area of responsibility changes as a result.

1.4.4. Sanctions

Applicants cannot assert individual claims because of a breach of these obligations. However, job applicants or the equal opportunity lawyer may file a complaint with the district administration.

The district administration issues a warning for the first breach of the obligations and imposes an administrative fine of up to € 360,- for further breaches.

2. Interview

2.1. General

The purpose of the interview is to discuss in detail with the applicant matters such as the type and scope of the work, level of remuneration, qualifications, trial period, starting date, performance monitoring, etc. The employer is also interested in getting to know the person as a private individual. In this way, the employer can assess whether the personality and attitude of the applicant suit the company.

The law does not expressly regulate those questions that are admissible or inadmissible in an interview. However, there is comprehensive case law on this.

Both the Equal Treatment Act and the Disability Employment Act (see Chapter 1) should be strictly observed, as otherwise violations of these provisions may give rise to claims for damages.

2.2. Right to ask questions

In principle, the employer has the right to ask questions. The extent of this right depends on the content of the future employment contract. The applicant must generally disclose all circumstances that could impede or burden the future working relationship. These include, for example, chronic or infectious diseases as well as criminal convictions relevant to the job.

In individual cases, however, there must always be a balance of interests. This balancing of interests may show that the employer's technically justified interest in information should be valued more highly than the employee's interest in obtaining the position.

Those questions the employer may legally ask, those best avoided, those the applicant must answer and when a lie on the part of the applicant is not sanctionable are set out below.

2.2.1. Questions about qualifications, training, experience

Depending on the position to be filled, some workplaces need more specialised requirements than others.

Caution!

Questions to the applicant about qualifications, training and experience are permissible in any case.

For this reason, the applicant must answer these questions truthfully.

The employer can therefore also request certificates or other proof (e.g. high school diplomas, college diplomas, apprenticeship certificate, master's certificate, attendance confirmations and examination certificates for certain courses, etc.).

Some collective agreements even require proof of these for the correct classification or crediting of pre-service periods. These certificates and proof are also important for holiday entitlements.

2.2.2. Questions about private life

Since the private life of a future employee is not directly related to their job at a workplace, questions about their private life should not be disproportionate and must in any case be directly related to the position.

2.2.3. Questions about marital status and children

Caution!

Questions on the partner or his/her job are not permitted.

The marital status or questions about children can in law be important for a straightforward employment relationship. Ultimately, claims by the employee (e.g. nursing leave or bonuses) can be linked to this.

If it turns out subsequently that the employee has been untruthful during the interview or in the personnel questionnaire in relation to his/her marital status, this does not form grounds for dismissal.

If the applicant can prove that he/she did not get the job solely on the basis of his/her marital status, claims for damages because of discrimination can be asserted against the employer.

2.2.4. Question about amount of previous salary

This question is frequently asked for reasons of setting the salary. It is often the case that the applicant deliberately cites a higher figure for his/her previous salary in order to be able to obtain a better initial salary from the new employer.

However, it would be going too far to assume this is an unacceptable deception. In fact, the determination of the salary is a question of the negotiating skills of the contracting parties because the employer will in very few cases offer the highest possible salary at the interview.

As a rule, therefore, applicants do not have to answer this question truthfully.

2.2.5. Questions about previous convictions

In principle, the employee does not at the interview need to answer questions from the employer about any previous convictions. He/she is also not obliged to refer to such convictions on his/her own initiative.

In the following situations, however, questions about previous convictions are permitted and must be answered truthfully:

- they must be about an as yet unsettled conviction and
- the judgement on which the previous conviction is based makes the applicant appear unsuitable with regard to the job sought.

Example:

If the applicant is to work as a cashier in a bank, any previous conviction for embezzlement or misappropriation must be mentioned.

Example:

In the case of an employee in the field, questions as to whether they have been responsible for a traffic accident involving personal injury would indeed be permissible and must be answered truthfully.

Caution!

If previous convictions have been removed from the record, the applicant may refuse to answer questions about them.

2.2.6. Questions about driver's license

The question of whether the applicant holds an appropriate driving license is permissible if the possession of a driving license is a prerequisite (professional requirement) for the exercise of a particular activity.

2.2.7. Questions about religious affiliation, political conviction or membership of a trade union

In principle, the question of party, religion or trade union membership is inadmissible.

Exception!

An exception can be made if the employer itself is a church, religious community, party or trade union.

But even here, it is critical to consider whether this is actually relevant for the particular activity with that employer (e.g. employee in accounting).

2.2.8. Questions about sexual orientation

The sexual orientation of the employee is a private matter and in no case needs to be answered truthfully.

Caution!

Discrimination based of sexual orientation – in every phase of the employment relationship – is also forbidden under the Equal Treatment Act and can give rise to claims for damages (see Chapter 1).

2.2.9. Questions about police clearance certificate

An employer may not generally require a certificate of good behaviour as it may contain more information than the employer is entitled to know for legitimate reasons.

One the other hand, the civil service or security services, for example, may require police clearance certificates from applicants.

2.2.10. Questions about pregnancy

Such questions are impermissible and need not be answered truthfully by the applicant.

If an applicant answers truthfully that she is pregnant and as a result does not get the job, this can lead to unpleasant consequences for the employer. If the applicant can prove that she did not get the job because of an existing pregnancy, claims for damages can be asserted against the employer on grounds of discrimination.

Caution!

Such a question is therefore not advisable.

If during the job interview an applicant says that she does not plan having children but becomes pregnant during the trial period and loses her job during that period, the termination can also be challenged because of discrimination under the Equal Treatment Act, as mentioned above. To this end, the employee must prove that the employer only terminated the employment relationship during the trial period because of the existing pregnancy.

Caution!

Only in special cases will an applicant have to provide information about an existing pregnancy in particular professions.

There are bans on employment for expectant mothers under the Maternity Protection Act. For example, they may not perform piecework or work with dangerous chemicals.

If an employee applies for such work, it is in her own interests to notify the employer of an existing pregnancy.

2.2.11. Questions about financial circumstances

In principle, the financial background of the applicant should not interest the employer. The applicant is not obliged to answer such questions.

Even deliberately untrue information has no consequences for the applicant.

Exception!

The employer will have an objective interest in answers to these kinds of private questions if the prospective position involves managing its assets (cashier, accountant, etc.) or if the risk of bribery or betrayal of secrets would be particularly high if the applicant was in financial difficulty.

2.2.12. Questions about state of health

Questions about the state of health and generally about illnesses are basically impermissible and do not have to be answered truthfully.

Exceptions!

In those areas where a medical examination to determine the suitability of the candidate is required by law or results from the type of activity (e.g. work in the health sector, cook, pilot).

If the applicant is suffering from an illness that poses a risk for the life and health of other employees in the company, the employer has a right to ask questions about it.

Questions about the presence of an infectious disease are also admissible and must be answered truthfully. In such a case, the employer's duty of care towards the other employees must be observed.

Questions about AIDS or an HIV infection must be answered truthfully if the risk of an exchange of bodily fluids can be expected in connection with the professional activity (e.g. nurse).

Caution!

If the employee is to undertake an activity that may affect his/her health, the applicant must be examined for suitability by a doctor.

However, the doctor may only tell the employer if the applicant is or is not suitable for the particular activity.

The doctor may not provide the employer with other details about the state of health.

2.2.13. Questions about the presence of a disability

In the case of questions about the presence of a disability, the interest of the applicant in obtaining a job must be rated higher than the interest of the employer in knowing whether a disability exists.

The applicant does not need to answer this question truthfully.

Exceptions!

Only in those cases where the state of health is a legal prerequisite for exercising an activity (e.g. pilot, train driver, etc.).

In terms of protection against discrimination, it should not make a difference whether a disability is registered or not.

Caution!

Disabled persons must only disclose a disability on their own initiative if it is a reason for them being unable to perform the advertised activity.

Caution!

Disabled persons must only disclose a disability on their own initiative if it is a reason for them being unable to perform the advertised activity.

2.2.14. Smoker yes/no?

The employer is permitted without sanction to ask whether an applicant is a smoker or non-smoker. There is no legal basis for the employee to expect to be granted smoking breaks under labour law.

There are statutory breaks for all employees. However, the law does not stipulate that the employer is also expected to guarantee further breaks such as smoking breaks.

For the protection of employees, the employer must ensure that non-smokers are protected from the effects of tobacco smoke in the workplace if this is possible given the type of business.

Example: a vacancy is to be filled in an existing work team located in the same room. In order to be able to fill this position correctly with due regard to employee protection, the question of whether the applicant smokes or not may be asked.

Under the law, there is no "human right" to a smoking break. There is also no legal discrimination against non-smokers since the principle of equal treatment does not stipulate this (see definition of the principle of equal treatment in Chapter 1).

2.3. Interview costs

2.3.1. Definition

Interview costs are costs that a job applicant incurs when applying for a vacant position with an employer. These are typically travel and accommodation costs.

In practice, job applicants usually only claim interview costs if the desired conclusion of an employment contract does not happen.

Caution!

Whether a job applicant is reimbursed by the employer for the interview costs incurred depends entirely on the behaviour of the potential employer before the interview.

2.3.2. Invitation to an interview

Current law does not expressly provide for the reimbursement of interview costs.

However, the Supreme Court has ruled that the potential employer must pay the interview costs if it has expressly asked the applicant to attend a personal interview.

The principle is then: whoever is responsible for arranging the job interview is responsible for the costs incurred (e.g. travel costs).

2.3.3. Exclusion of reimbursement

The employer can completely or partially avoid the obligation to reimburse interview costs by expressly excluding the claim for reimbursement of expenses in its invitation to attend the interview.

Tip!

In the written invitation to a specific job interview, the employer should therefore clearly state that it will not bear the costs incurred in connection with the application.

Example:

"We would like to emphasise that we will not reimburse you for any expenses incurred in connection with your application, such as travel costs and daily or overnight expenses."

2.3.4. No reimbursement

Under no circumstances must interview costs be borne by the employer if the employee has introduced him/herself personally without prior contact with the potential employer on the basis of an advertisement (e.g. in a newspaper) by the employer, for example.

3. Employment of foreign nationals

3.1. General

The employment of foreign nationals in Austria is only permitted if

- they are generally exempt from the Employment of Foreign Nationals Act, or
- there is official approval for their employment.

Caution!

The illegal employment of foreign nationals in Austria is strictly controlled by the financial police, a department of the tax authorities, and is punished with high fines.

3.2. Official approval

The regional branch of the Labour Market Service (AMS) is responsible for issuing official approval to employ a foreign national.

Approval to employ a foreign national may be granted, depending on the existence of one of the following criteria:

- employment permit,
- red-white-red card, red-white-red card plus, EU blue card,
- EU posting approval,
- confirmation of notification,
- proof of settlement,
- residence permit, artists,
- residence authorisation plus,
- "family member" residence permit,
- EU permanent residence permit,
- confirmation of freedom of movement (for Croatian nationals), or
- exemption certificate (new, only for Turkish nationals).

Caution!

One of these permits must be issued before the foreign national is employed, even if only marginal employment is envisaged. In addition, the employer must report the beginning and end of all employment relationships with foreigners to the responsible regional branch of the Labour Market Service within three days.

This does not apply to foreign nationals who hold an EU permanent residence permit.

3.3. Foreign law

In addition to the criteria of the Employment of Foreign Nationals Act, the foreign law requirements for the residence of foreign nationals in Austria must be observed.

To take up legal employment in Austria, a valid residence permit is required in the form of

- a settlement permit (for a period of one year), or
- a residence permit (visa C + D for a maximum of 6 months).

Nationals from EEA states (Belgium, Denmark, Germany, France, Greece, United Kingdom*, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Finland, Iceland, Liechtenstein, Austria, Norway, Sweden), the new EU Member States (Poland, Czech Republic, Slovakia, Slovenia, Hungary, Lithuania, Latvia, Estonia, Malta, Cyprus, Romania, Bulgaria and Croatia), plus Switzerland no longer need a settlement permit or residence permit.
Attention: due to the withdrawal of Great Britain from the EU, note special regulations

3.4. Exceptions to the Employment of Foreign Nationals Act

The Employment of Foreign Nationals Act provides for numerous exceptions for various groups of people.

If a foreign national is excluded from the scope of the Employment of Foreign Nationals Act, he or she can, like any national, be employed without an additional permit.

Caution!

The employer must verify the existence of an exception and, if necessary, prove this with an investigation. If the employer erroneously assumes the existence of an exception provision, this constitutes unjustified employment in accordance with the provisions of the Employment of Foreign nationals Act. The relevant penalties will apply.

3.4.1. EEA citizens

All EEA (and therefore also EU) nationals, plus Swiss nationals, are in principle excluded from the scope of application of the Employment of Foreign Nationals Act.

This applies in any case to employment of nationals of: Belgium, Bulgaria, Croatia, Denmark, Germany, Estonia, Finland, France, Greece, United Kingdom*, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Austria, Poland, Portugal, Romania, Sweden, Switzerland, Slovakia, Slovenia, Spain, Czech Republic, Hungary and Cyprus.
Attention: due to the withdrawal of Great Britain from the EU, note special regulations

3.4.2. Family members of third-country nationals

Spouses of Austrian nationals, of another EEA national and Swiss nationals are exempt from the provisions of the Employment of Foreign Nationals Act, provided they are entitled to reside in Austria.

Example:

The Filipino wife of an Austrian or German man, who is entitled to reside in Austria, may be employed in Austria without official permission provided that the husband is resident in Austria.

Caution!

The employer should ask the employee to provide confirmation in accordance with § 3 para. 8 AuslBG before the employee starts work. The AMS thus confirms that the family member is exempt from the provisions of the Employment of Foreign Nationals Act.

Children of an Austrian national, another EEA national or Swiss national, who are not yet 21 years old or for whom the Austrian national, EEA national or Swiss national provides maintenance are also exempt from the provisions of the Employment of Foreign Nationals Act, provided the child is entitled to reside on federal territory.

Example:

The 16-year-old Filipino child of the wife of an Austrian or German man, who lives in Austria and is entitled to reside in Austria, may be taken on in an apprenticeship without official permission.

Third-country national parents and in-laws of Austrian or other EEA nationals, who are exercising their right to free movement, are also excluded from the provisions of the Employment of Foreign Nationals Act.

4. Blue and white-collar employees

Anyone who is employed under an employment relationship can work as either a blue-collar or white-collar employee.

4.1. White-collar employees

According to the Salaried Employees Act, white-collar employees are those who provide

- commercial services
- higher, non-commercial services (with appropriate previous knowledge), or
- office work (all office activities).

Caution!

The provisions of the Salaried Employees Act apply strictly to white-collar employees. Therefore, no-one who works in a white-collar job, can be employed as a blue-collar worker. The provisions of the applicable collective agreement also apply.

Examples:

White-collar employees are all office workers, clerks, buyers and sellers, accountants, programmers, payroll clerks, surgery staff, receptionists in hotels, store detectives who monitor customers, operate security equipment and carry out trial purchases, etc.

4.2. Blue-collar employees

There is no separate legal regulation that defines who is a blue-collar worker. Worker activities are both simple manual ancillary services and highly-qualified manual activities that require several years of training (skilled workers).

Caution!

The regulations of Industrial Code 1859 and the General Civil Law, as well as the provisions of the industry collective agreement to be used apply to blue-collar employees.

Examples:

Blue-collar employees include bakers and butchers, buffet staff, waiters, chauffeurs, porters, fitters, warehouse workers or craftsmen, etc.

4.3. Legal differences

The following legal differences are currently made between blue and white-collar employees:

- periods of notice and termination dates,
- reasons for early termination,

Since the 1 October 2021, the notice periods and dates for white-collar employees will basically also apply to blue-collar service relationships. Deviating collective bargaining agreements (especially shorter periods of notice for blue-collar workers) are permissible for industries in which seasonal operations predominate.

However, different regulations still apply

- to reasons for early termination,
- to special payments,
- to the Works Constitution Act (separate blue and white-collar employee works councils), and
- (under social law) with regard to the eligibility requirements for invalidity/disability pension.

5. Apprentices

5.1. General

Apprentices are people who, on the basis of an apprenticeship contract, are trained professionally by an authorised trainer and who work during the training.

The initial training of an apprentice requires a decision from the Apprenticeship Office, which checks that the company is suitable for apprentice training and that the employer is authorised to train apprentices.

An apprenticeship contract can only be concluded for training in one of the professions in the apprenticeship occupation list. The apprenticeship occupation list is contained in an ordinance. There is a separate job description for each apprenticeship occupation.

5.2. Conclusion of the apprenticeship contract

The apprenticeship contract must be in writing. The conclusion of an apprenticeship contract with a minor requires the agreement of the apprentice's legal guardian. A person ceases to be a minor when they reach the age of 18. In the case of legitimate children, each parent alone is entitled to represent the apprentice who is a minor. In the case of illegitimate children, the mother usually has the right of representation.

Since the apprenticeship contract is a fixed-term contract, the start and end of the apprenticeship must be specified.

5.3. Registration of the apprenticeship contract

Within three weeks of the start of the apprenticeship relationship, the company must register the apprenticeship contract with the Apprenticeship Office responsible for registration (recording). Four copies of the contract must be attached to the application.

Tip!

Use the apprenticeship contract forms from the Apprenticeship Office as these comply with the requirements of the Vocational Training Act.

Caution!

If the legal provisions are violated, the Apprenticeship Office may decline to record the contract. The apprenticeship relationship ends automatically when the decision to decline is legally enforced.

After the contract has been recorded, one copy remains with the Apprenticeship Office, one is returned to the apprentice trainer, the apprentice or his/her legal representative receives one and another is sent to the Chamber of Labour.

5.4. Vocational school

The apprentice must be registered at the vocational school within two weeks of the start of the apprenticeship. In the event of premature termination of the apprenticeship, the student must de-register. The trainer must give the apprentice the time necessary to attend school and ensure he/her attends. School time is considered work time.

5.5. Entitlements under labour law

The apprentice is entitled to pay equal to the apprentice's occupation and year under the collective agreement. The holiday entitlement is 5 weeks per year. Continued remuneration in the event of illness is regulated in the Vocational Training Act unlike for blue and white-collar workers. The protective provisions of the Children's and Youth Employment Act (e.g. with regard to working hours and rest from work) must be complied with for apprentices up to the age of 18.

5.6. Period of continued employment

After completing the apprenticeship, the apprentice is obliged to continue working for 3 months (retention period) in the trade he/she has learnt. If the apprentice has not completed more than half the training period in the company, the retention time is reduced to 1.5 months. A fixed-term employment contract can be concluded for the retention period. This should be done at the beginning of the apprenticeship.

Caution!

Some collective agreements provide for an extension of the retention period.

5.7. Apprentice subsidy from the AMS

Companies can receive a flat-rate subsidy for the training of young people and adults to cover the costs of apprenticeship training, extended apprenticeship training or partial qualification.

Further information can be found on the website of AMS Austria at
http://www.ams.at/service-unternehmen/lehrlinge

However, the actual subsidies for apprenticeship training can vary from state to state. Further information can be found on the AMS website of the respective state.

6. Holiday intern and holiday employee

6.1. Holiday intern

Holiday interns are school or university students who complete a mandatory internship in a company as a supplement to their education. The purpose of the training is the key issue.

6.1.1. Job features

The holiday intern is primarily permitted to work in the company for the purpose of training and further education. There must be no commitment to observe company working hours or to be bound by instructions. However, the holiday intern must comply with the general company rules and safety regulations.

6.1.2. Remuneration

No regular pay is due. Whether pocket money is paid and the amount is subject to free agreement. In practice, the pocket money is often set well below the lowest pay for employees.

6.1.3. Status under labour law

The holiday intern is not an employee in the sense of labour law. The provisions of labour law, such as the Leave Act, Continued Remuneration Act, Salaried Employees Act or the collective agreement do not apply to him/her.

Caution!

If special provisions are made in the collective agreement with regard to holiday interns, these must be observed. The collective agreement may, for example, provide for holiday interns being treated as employees. Such holiday interns are subject to the statutory and corresponding collective agreement provisions on remuneration, continued payment of remuneration, holidays, etc. If there are no collective agreement provisions, holiday interns are regarded as employees if they are integrated into the company organisation by being bound by instructions and working hours.

Example:

The collective agreement for the hotel and catering industry provides for an entitlement to remuneration in the amount of the respective apprentice remuneration for holiday work placements in accordance with education law regulations. It follows from case law that holiday interns in the catering and hotel industry can only be employed within the framework of employment relationships.

6.1.4. Social security

Holiday interns without pocket money are not required to register for compulsory insurance. During their employment, they are covered by accident insurance without contributions from their employer.

If the employer pays pocket money to the holiday intern, registration with social security is required.
As in a real employment relationship, registration must take place before starting work.

If the pocket money exceeds the minimum limit (2024: € 518,44 per month), this leads to full insurance.

If the pocket money does not exceed the minimum limit, this equates to marginal employment of the holiday intern, which in principle only involves accident insurance.

Tip!

If the company wants to pay pocket money, the minimum remuneration limit should be observed in order to keep non-remuneration costs low.

Caution!

Since in practice some regional health insurance funds use the granting of pocket money as an argument for re-qualification into a real employment relationship, agreeing to pocket money is not recommended.

Caution!

Although no employment law provisions apply to holiday interns with pocket money, the health funds require company (Österreichische Gesundheitskasse) to pay contributions for these people from the second month of the internship in accordance with the Company Employee and Self-Employed Pension Act (BMSVG) and to the employee pension fund if the internship lasts longer than one month. This applies regardless of whether or not the pocket money exceeds the minimum limit.

6.1.5. Foreign students attending a domestic school

The employer does not require an employment permit for foreign students (including students who are nationals of a third country) attending domestic schools and completing a compulsory internship. However, the employer must report the employment to the Public Employment Service at least 14 days before the start of the activity. The necessary forms are available from the Public Employment Service.

The responsible regional Public Employment Service must issue confirmation of notification within 2 weeks. At the end of this period, the employer may employ the foreign student, even if notification confirmation has not been received.

In the event of notification confirmation being rejected and the foreign student being already employed at the company, this employment must be terminated within one week of delivery of the rejected notification confirmation.

6.1.6. Students from the EU

Compulsory interns from EU Member States must be treated in the same way as Austrian interns under social security law. School regulations must also be recognised in the same way as Austrian school regulations.

6.1.7. Compulsory interns from third states (non-EU states)

Students from third countries who have to complete a compulsory internship under their school regulations and would like to do so in Austria must be registered as employees under social insurance law.

The Employment of Foreign Nationals Act must also be observed here. These compulsory interns require an employment permit unless an exception is provided for in international agreements between Austria and the third country concerned.

6.1.8. Age limit

In principle, young people may only enter into employment after they have reached the age of 15 and only after completion of compulsory schooling. However, for compulsory internships according to the School Organisation Act, the exception applies that although compulsory schooling has been completed, the 15th year of age does not have to be completed.

6.2. Holiday employees

A distinction is made between holiday interns and holiday employees. These are pupils or students who want to earn money during their holidays but the work is not required as a compulsory internship by the school or university. Such holiday workers must be employed for a fixed or indefinite period of time.

6.2.1. Status under labour and social security law

Holiday employees have the same rights under labour law as other company employees. They must always be registered with the company health fund.

Caution!

An employment contract for an indefinite period can only be terminated in accordance with the respective collective agreement or statutory provisions. It is inappropriate to conclude an open-ended employment contract because the periods of notice for these employees are long and there are also few notice dates available. It is therefore advisable to agree on an employment contract for a certain period of time as soon as the person joins the company.

Tip!

It is advantageous to conclude employment contracts with holiday workers in writing and, if possible, to agree on a trial period in the contract.

7. Collective agreement

7.1. Definition and content

The collective agreement is an agreement concluded between employers' and employees' associations that are eligible for collective agreements. On the employer side, it is primarily the professional associations or groups of the Chamber of Commerce organisation that can undertake collective bargaining. On the employee side, the Austrian Trade Union Association can undertake collective bargaining.

In addition to the legal provisions, collective agreements mainly regulate the rights and obligations of employers and employees, which arise from the employment relationship. Agreements deviating from the collective agreement are only valid if they are more favourable to the employee.

7.2. Applicability

A collective agreement is binding in its geographical and personal area of operation

- for all employers who are members of the concluding employer association or were members at the time the collective agreement was concluded, and
- the employees of such an employer

Caution!

There are still areas of business life for which no collective agreement has been concluded (e.g. leisure facilities, amusement facilities, etc.).

7.3. Which collective agreement to use?

The collective agreement to be applied to the employment relationship depends on the employer association to which the employer belongs.

Caution!

It is irrelevant which occupation the employee has learnt or actually practices. An accountant who works in a hotel is subject to a collective agreement for hotel and restaurant employees.

The acquisition of a business license is linked to membership of the corresponding professional organisation in the Chamber of Commerce organisation. If this professional organisation has concluded a collective agreement, the full validity of the collective agreement is guaranteed in the sector concerned.

Caution!

Employees of employers who carry out a commercial activity without the necessary trade license ("cowboys") are also subject to the collective agreement that would have been applicable if the occupation had been practised lawfully.

7.4. Affiliation to multiple collective agreements

An employment relationship is always subject to only one collective agreement. If an employer who is a member of more than one collective agreement has two or more establishments to which different trade licenses apply, the collective agreement corresponding technically and locally applies to the employees.

Example:

X-GmbH has a factory in Bruck a.d. Mur and also a trading company with branches in all capitals in Austria. The staff working for the factory are subjected to the collective industry agreement and the staff working at the trading company are subjected to the collective trade agreement.

If the business is divided into parts or has other organisational or functional boundaries, the collective agreement to be used is the one that corresponds operationally and locally to the company or part thereof.

Example:

Y-GmbH operates a car dealership in Linz, which is managed by a sales manager, and a car workshop that is managed by a workshop manager. The sales staff are subject to the collective trade agreement and the mechanics in the workshop to the collective agreement for the iron and metalworking industry.

If a company has several trading licenses but no operational or organisational separation, it is a so-called mixed business. Despite the existence of several collective agreements, only one applies, i.e. the one that corresponds to the business sector that is of decisive commercial importance for the company (that is, for the core business of the company).

Example:

Mr Z operates a car workshop with three mechanics and has an affiliated used-car dealership. The workshop turnover exceeds that of the trading business. All employees, including sales staff, are subject to the collective agreement for the iron and metalworking industry.

If, in a mixed business, the main economic significance lies in a business area to which no collective agreement applies, the collective agreement of the less significant sector applies to all employees belonging to the respective professional groups (blue or white-collar employees).

Example:

A company operates a used-goods business and a clearing business at the same location. There is a collective agreement for the trading business but not for workers in the clearing business. There is no organisational and operational separation of the two areas. The turnover of the company comes mainly from the clearing business. The employees work in both areas. Although the main economic importance lies in the clearing business, the collective agreement of trade workers applies to all employees of the company.

If there is neither an organisational separation nor a major economic significance, the collective agreement that applies is the one whose range of application covers the greater number of employees, regardless of the relationships in the business.

8. Employment note or employment contract

8.1. General

The employment note is a written record of the main rights and obligations arising from the employment relationship. The employer is legally obliged to issue an employment note.

Tip!

No employment note need be issued if a written employment contract is issued, containing all the details of an employment note.

8.2. Minimum content of the employment note

The employment note must contain the following information:

- name and address of the employer and employee,
- start of the employment relationship,
- end of the employment relationship (if for limited period),
- duration of period of notice and date of termination, information about the termination procedure,
- usual (or changing) place of work, headquarter of the company,
- classification in a general scheme,
- job description, description of the specific work performance,
- indication of the the amount of the starting salary,
- other remuneration components, like special payments and compensation for overtime hours,
- basic amount, due date and method of compensation for the amount,
- amount of leave,
- agreed daily or weekly normal working hours and information on change to shift schedules, if necessary,
- collective agreement, articles of association, minimum remuneration rate, works agreements and the like,
- name and address of the employee pension fund and the social insurance provider,
- duration and conditions of an agreed trial employment relationship,
- entitlement to further training provided by the employer.

The information

- duration of period of notice and date of termination,
- usual (or changing) place of work,
- starting salary, due date for remuneration,
- amount of leave, and
- agreed daily or weekly normal working hours,
- agreed trial employment relationship,
- further training provided by the employer

can also be made by reference to laws, collective agreements, works agreements or usual company travel guidelines.

8.3. Evidential value

The employer uses the employment note to inform the employee of the conditions agreed verbally.

Caution!

The evidential value of the employment note is extremely limited, since the signature of the employee merely confirms acceptance of the employment note. In the event of a dispute before the labour court, the employee may prove that the content of the service not does not coincide with the verbal agreement.

Tip!

It is therefore advisable not to issue an employment note but to draw up a written contract signed by the employer and the employee as a sign of mutual agreement. The content of this written employment contract is deemed to have been agreed. The employment contract is therefore of greater evidential value.

Caution!

The function of proof is very important for the employer. With a written employment contract, it can for example prove that a trial period, a limitation to the employment relationship or particular termination dates for white-collar employees have been rightfully agreed.

8.4. Administrative obligations

The employee must be notified in writing without delay of any change to the information on the employment note and no later than the day it takes effect.

Such notification need not be made if

- only general standards such as the law or collective agreements change, or
- the basic salary or basic remuneration is recalculated on the basis of an increase in the collectively agreed amount, or
- the collective agreement stipulates the corresponding collectively agreed basic salary or basic remuneration is changing because of an advance payment dependent on length of service but the employee remains in the previously valid job or professional group of the collective agreement.

One copy of the employment note must be given to the employee and one copy remains with the employer.

Issuance of the employment note and employment contract is free of charge.

8.5. Administrative penalties for non-disclosure

Employers who don´t provide employees with an employment note, are liable to an administrative fine of € 100,- to € 436,-. In the event of a repeat offense within 3 years or a first-time offense involving more than 5 employees, the fine is between € 500,- and € 2.000,-. However, it isn´t possible to impose multiple fines per affected employee.

9. Trial employment relationship

9.1. General

During the trial period, the employment relationship may be terminated by the employer or employee

- without observing deadlines and dates, and
- without giving a reason

.

9.2. Extent

The duration of the trial period for blue and white-collar workers may not exceed 1 month according to the General Civil Code and Salaried Employees Act.

Example:	
Hire date	End of trial month
4 April	3 May
1 February	28 February (29 February in a leap year)

Collective agreements may shorten the trial period but not extend it beyond one month.

Tip!

In order to determine the correct trial period for employees who are to be hired, it is vital to take a look at the collective agreement of the corresponding industry. Some shorter trial periods such as 14 days are provided for in collective agreements, especially for blue-collar employees.

Caution!

An extension of the trial period of an employment contract beyond 1 month or beyond the collectively agreed (shorter) trial period is not legally effective and can, in the worst case, lead to the existence of an unlimited employment relationship.

9.3. Agreement

The trial period must be expressly agreed. An agreement can only be omitted if the respective collective agreement provides for a binding trial period.

Tip!

For evidential purposes, it is advisable to include the trial period in writing in the employment contract or employment note.

Caution!

Under some collective agreements, a trial period agreement must be made in writing (e.g. collective agreement for the woodworking industry) to be legally effective.

9.4. Apprentices

The Vocational Training Act sets a trial period of three months for apprentices. If the apprentice completes the compulsory schooling at a vocational school in the first three months, the first 6 weeks of training in the company can be a trial period.

9.5. Termination declaration

Termination of the employment relationship by the employer must be advised to the employee on the last day of the trial period at the latest and must therefore be issued promptly before that date. For evidential purposes, a written declaration of termination is recommended. A written declaration of termination is required by law for apprentices.

Caution!

It is not sufficient to send a written declaration of termination on the last day of the trial period. The date of the postmark is irrelevant.

9.6. Trial period in key industries

		specified by collective agreement	**to be agreed**
Trade	white-collar workers	1 month	
	blue-collar workers	1 month	
Hotel and hospitality industry	white-collar workers		1 month
	blue-collar workers	14 days	14 days with limitation
Goods transport	white-collar workers	1 month	
	blue-collar workers	1 month	
Industry/Metal sector	white-collar workers		1 month
	blue-collar workers		1 month
Trade and Craft sector	white-collar workers blue collar workers	1 month 1 month	

10. Fixed-term employment relationships

10.1. Definition

Fixed-term employment relationships are those concluded for a certain time. They end automatically upon expiry of the agreed contract period without the need for a special declaration of termination.

10.2. End date

A fixed-term employment relationship exists if the agreed end date of the relationship is fixed on a specific calendar day.

However, the end of the employment relationship may also be an end date that can be determined objectively in another way and can be arbitrarily influenced by the parties to the contract (e.g. a time limit for the duration of a particular employee's maternity leave).

Caution!

A calendar-based specification of the end date as a prerequisite for an effective limitation is necessary if the collective agreement applicable to the employment relationship expressly requires this (e.g. collective agreement for workers in the hotel and restaurant industry).

Tip!

If the employer does not wish to continue to employ the employee beyond the end date, it should inform the employee before the end of the fixed-term period.

10.3. Maternity rights

Fixed-term employment relationships with pregnant employees where the agreed end date is before the start of the employment ban are extended by law until the start of the employment ban. However, this does not apply if the fixed term is provided for by law or for objectively justified reasons stated in the Maternity Protection Act.

10.4. Termination

Generally, a time limit excludes termination of the employment relationship by the employer or employee before the contractually agreed end because the time has expired.

Termination at an earlier date is only permissible in the case of a fixed-term employment relationship if a termination option has been expressly agreed between employer and employee (maximum time limit). The purpose and duration of the time limit on the one hand and the possibility of termination on the other must, however, be in a reasonable time relationship to each other.
This is assessed very strictly and should be clarified with an expert beforehand.

Example:

In the case of seasonal employment limited to 9 months as a waiter in the catering trade, an additional termination option can be effectively agreed.

In the case of holiday employment limited to 9 weeks as an employee in an industrial company, the additional termination option cannot be effectively agreed.

10.5. Chain employment relationship/follow-up period

The agreement of a further fixed-term employment relationship immediately following a fixed-term employment relationship or a short interruption (follow-up fixed term) requires objective justification on specific economic or social grounds.

Caution!

If the employer cannot prove specific objective grounds for justification, follow-on, fixed term employment relationships are assessed and treated as an unethical, unlimited chain employment relationships and are regarded as continuous.

11. Registering employees with the Austrian Healthcare Insurance fund

Registration must, without exception, take place “before” starting work.

11.1. Registration options

The obligation to register can be done in two ways:

- full registration before starting work,
- double registration with minimum information registration before starting work and full registration within 7 days of starting.

Tip!

Full registration before starting work reduces the workload and prevents registration forms being filled in differently. However, if the employee does not actually start work, the registration must be cancelled.

Caution!

Minimum information registration always requires full registration as a second administrative step.

11.1.1. Minimum information registration

The minimum information registration before starting work must contain:

- employer name,
- employer account number,
- name and gender of person being hired,
- insurance number or birth date of person being hired,
- place of employment,
- employment start date,
- occasional
- employment, yes/no.

11.1.2. Full registration after minimum information registration

Full registration must take place within 7 days of starting work and must contain the information missing from the minimum information registration:

- marginal employment, yes/no,
- start, remuneration and MV fund,
- applicable regulations (AngG, EFZG),
- type of employment (scope, blue-collar, white-collar),

11.2. Form of registration

11.2.1. Remote data transfer - ELDA

Both the On-site registration and full registrations must be performed electronically using remote data transfer via ELDA (www.elda.at) in uniform data records defined by the main association.

Two copies of the confirmed full registration must be returned to the employer and one copy without delay to the employee.

The On-Site registration does not have to be given to the employee.

11.2.2. Registration by phone, fax, etc.

If electronic registration is not possible, for example because of

- lack of IT equipment,
- blameless failure of the remote data transmission equipment,
- registration outside the tax advisor's office hours, or
- registration from a permanent establishment without IT equipment,

exceptions from registration are provided by ELDA.

Caution!

Since 1.1.2014, registrations, de-registrations and change notifications on paper for legal persons and registered partnerships have no longer been possible, with the exception of On-Site registrations. Due to the Social Fraud Prevention Act (SBBG), registrations for compulsory insurance (except for On-Site registrations) have also been permitted for individual companies from 1.1.2016 only using remote electronic data transfer (full registration). Registrations without remote data transfer are considered as not valid. The only exceptions are for persons in private households if remote data transmission is unreasonable or was technically impossible due to the blameless failure of the remote data transmission system.

11.3. Consequences of registration violations

If, during a check, the federal or social security inspection bodies encounter working persons for whom a registration (On-Site or full) before working-start is not available, a report must be filed with the district administrative authority. There is a risk of fines of € 730,- to € 2.180,- for each unregistered person, and up to € 5.000,- in repeated cases.

A fine reduction to € 365,- is possible for the first violation (no violation due to late reporting within the past 12 months) and insignificant consequences.

Caution!

In addition, the Austrian healthcare insurance fund can impose premium surcharges. If the registration was not made before starting work and this is determined by an inspection body, € 400,- must be paid per missed registration and € 600,--for the verification effort. Only in cases that are particularly worthy of consideration can these amounts be reduced or cancelled.

For all reporting violations (e.g. late deregistration, late delivery of the mBGM, late correction of the mBGM, late change reports) with the exception of the above-mentioned case of entry, late payment surcharges apply. Basically, € 59,- is charged for each violation. If self-invoices reimburse the mBGM late, the default surcharge will be staggered depending on the delay (up to five days: € 5,-, up to ten days: € 10,-, until the end of the month: € 15,-, then: € 59,-). The staggering does not apply in the mandatory contribution procedure. Anyone who does not submit the correction of under-reported remunerations within twelve months must pay a late payment surcharge in the amount of the interest on arrears. The sum of all late payment surcharges within a contribution period (with the exception of those for late registrations) must not exceed five times the daily maximum contribution basis (2024: € 1.010,-).

Occasional employees (Fallweise Beschäftigte) are also to be reported electronically before starting work. The registration of employees on a case-by-case basis (Fallweise Beschäftigte) is to be reimbursed for each day of employment and acts as an on-site registration. As with ongoing insurance relationships, the registration obligation is only fulfilled after the monthly basic contribution report (mBGM) has been reimbursed. The final registration and deregistration for persons employed on a case-by-case basis (Fallweise Beschäftigte) is to be reimbursed as an mBGM for employees on a case-by-case basis.

This means that an electronic post-registration of the individual days of employment within seven days after the start of compulsory insurance is not required for case-by-case employment - in contrast to continuous employment. The final registration and deregistration of a person employed on a case-by-case basis is reimbursed with the mBGM for case-by-case employees.

12. Marginal employment

12.1. Definition

Marginal employment is defined as an employment relationship in which the remuneration does not exceed the minimum income threshold under social insurance law. In 2024, this is € 518,44 gross per month.

A marginal employment relationship may exist under social insurance law if staff are employed part time, on a case-by-case basis or on a freelance basis.

Caution!

If the limit of € 518,44 (2024) is not exceeded because an unlimited employment relationship or one limited to at least one month started, ended prematurely or was interrupted during a calendar month, no marginal employment relationship exists.

12.2. Status under labour law

Under labour law, there are virtually no differences between fully insured and marginal employment relationships. Marginal employment is a form of part-time work.

Therefore, the marginally employed person is also entitled to

- a minimum remuneration under collective bargaining agreements,
- special payments within the sense of the collective agreement
- continued payment of remuneration while on sick leave,
- continued payment of remuneration for other reasons that prevent service,
- nursing leave,
- holiday and
- “Old” service for new entrants since 1.1.2003 company pension provisions (“new” service).

12.3. Termination

A marginal employment relationship of a blue-collar worker may be terminated in accordance with the provisions of the respective collective agreement.

Caution!

On the 1.10.2021, notice periods and termination dates for blue-collar workers would be aligned with those of white-collar employees.

Since 1.1.2018, no special termination provisions apply to white-collar employees in a marginal employment relationship.

From that time, the “normal” period of notice is at least six weeks for employer terminations and the end of the quarter as the termination date. Termination on the 15th of the month or on the last day of the month is only possible if this has been agreed.

12.4. Social security

12.4.1. Accident insurance contribution

The employer must pay an accident insurance contribution of 1.3% of the general contribution basis for all employees in a marginal employment relationship.

12.4.2. Employer tax

The employer must pay employer tax for all employees in a marginal employment relationship, if

- the employer has more than one marginally employed person, and
- the monthly remuneration total of all such employees exceeds 1.5 times the marginal income threshold (for 2024: € 518,44 x 1.5 = € 777,66).

Example:

If 5 marginal employees are employed at € 110,- per month each, there is no employer tax (€ 110,- x 5 = € 550,-). Only the accident insurance contribution has to be paid in each case.

The employer tax is a flat-rate amount for health and pension insurance in the total amount of 19.4% of the contribution basis. Together with the accident insurance contribution, the total premium is 20.5 %.

The contribution basis is the total of the monthly remuneration paid to the marginal employees involved, including special payments. The contribution is due at the end of the year and must be paid by the 15th of January of the following year.

12.4.3. Flat-rate employee contribution

The employee must pay a contribution to the regional health insurance fund if

- there are several marginal employees who together exceed the total marginal employment threshold, or
- a fully insured service relationship coincides with a marginal employment

The flat-rate employee contribution for blue and white-collar workers is 14.12%. Employees must pay their own contributions to the health insurance fund. The contributions are due once a year at the end of the year.

12.4.4. Notifications

Registration, de-registration and change notifications are the same as for a normal employment relationship.

Caution!

Marginal employees are subject to company employee benefits (new service) at a contribution rate of 1.53%.

13. “New” service

13.1. General

The “new” service (company pension) is regulated by the Company Employee and Self-employed Pension Act (BMSVG) and applies to all

- blue-collar workers
- white-collar workers
- apprentices
- domestic helpers

whose employment relationship started after 31.12.2002.

Since 1.1.2008, the “new” service also applies to freelancers and the self-employed.

13.2. Start and duration of the contribution obligation

13.2.1. Start for first hires

Generally, the obligation to contribute to the company pension (BV) begins at the start of the second month of the employment relationship. The first month is in any case free of the obligation. This takes into account the fact that in most employment relationships, dissolution is possible at any time in the first month (trial period).

If the employment relationship ends lawfully before or at the end of a month, there is no obligation to contribute.

The exemption from contribution in the first month also applies to apprentices. The fact that their trial period is three months does not extend this exemption.

Caution!

The exemption month is not a calendar month but a “natural” month, i.e. it lasts for example from the start of the employment relationship on 7 January until 6 February. It follows that if the employment relationship starts during a calendar month, the remuneration for the following calendar month has to be split into contribution-exempt and contribution-liable parts according to the timing. If this splitting is too labour-intensive and you therefore pay the contribution for the non-contributory part to simplify matters, you do not have to pay any additional taxes under the current income tax guidelines.

Example 1:

Start of employment, End of employment	1 February 28 February	Dissolution in trial month

no contribution or holiday compensation

Example 2:

Start of 7
End of 1st month 6 February, continuation of employment

If exemption for January payment and payment for 1 to 6 February, contribution obligation from 7 February

13.2.2. Start for re-hires within 12 months

If a new employment relationship is concluded with the same employee within 12 months of termination of the previous employment relationship, the contribution obligation exists from the first day of the new employment relationship.

Example:

Start of employment: 12 March, End of

employment: 31 May Contribution obligation

from 12 April until 31 May New employment:

3 July

13.3. End of contribution obligation

The contribution obligation generally ends with the right to social insurance compensation. It therefore does not apply to all unpaid holidays or other unpaid periods.

However, there are special provisions for periods of military service, community service, maternity allowance and sickness benefit.

13.4. Contributions and contribution process

Without exception, the contribution is 1.53%. As a rule, the basis for calculating the contributions is the monthly remuneration, including special payments.

Special theoretical measurement bases apply for periods of military and civil service, maternity and sick pay.

“Remuneration” is the term used under social insurance law for remuneration, with the marginal employment threshold and maximum contribution basis playing no role. The obligation to contribute therefore also applies to marginal remuneration and remuneration above the maximum contribution basis.

Caution!

All forms of remuneration (cash or non-cash benefits) or parts of remuneration that are generally subject to social insurance contributions are therefore also subject to the contribution liability. On the other hand, all remuneration or parts of remuneration that do not qualify as remuneration under social insurance law, e.g. travel expenses or travel.

Contributions are processed by the payment of contributions together with social insurance contributions to the responsible healthcare insurance fund. The latter forwards the contributions to the pension fund responsible for the employee registered by the company.

Caution!

Contributions must be paid by the 15th of the following month. Late payment within the three-day respite period have no legal consequences but interest accrues after that.

14. Payroll account

14.1. General

The employer must keep a payroll account for each employee.

The payroll account directive allows for uniform payroll regulation. The uniform content of a payroll account provides legal certainty on the one hand, because any applications for exemptions are no longer possible, and on the other ensures that joint assessment of remuneration-dependent levies is simplified.

Caution!

If the payroll accounts are kept abroad, they must be brought to Austria within a set period at the request of the taxation authorities.

14.2. What information to enter in a payroll account?

A payroll account must contain the following information:

1. employee name,
2. place of residence,
3. insurance number,
4. single earner/single-parent deduction and child allowances on the single earner/single-parent deduction as requested by the employee,
5. name and insurance number of the (spouse) partner, if the single-earner deduction has been taken into account,
6. name and insurance number of the (youngest) child, if the single-earner deduction has been taken into account,
7. name and insurance number of the child/children, if the child allowance has been taken into account,
8. name, insurance number, date of birth of each child for whom the family bonus has been taken into account, and the number of months and the amount of the family bonus Plus taken into account
9. social insurance institution responsible for the employee,
10. municipality entitled to levy local tax within the meaning of the local tax act; an employer maintains businesses in several municipalities: period during which the employee is employed at this permanent establishment as well as the levying municipality,
11. details of salary payment period and day of payment (e.g. due date according to collective agreement or agreement in the employment contract; for white-collar employees the last day of the current month, leaving date in the case of a broken payroll period),
12. monthly current gross salary (benefits in kind, overtime, extra hours, bonuses, allowances, etc.),
13. special payments or other payments, gross,
14. remuneration for beneficiary work abroad,
15. remuneration of foreign students (holiday interns),
16. daily allowances, mileage allowances and lump-sum overnight allowances (tax-free travel expenses can be entered in one amount on the payroll account, regardless of the provision in the Income Tax Act that makes then tax-free),
17. grants for future insurance,
18. free or discounted transfer of employee participations, stock options,
19. Profit sharing up to EUR 3.000 per year per employee
20. employee discounts exceeding 20% in individual cases,
21. employer subsidies for childcare costs,
22. voluntary contributions to repair disaster damage,

23. remuneration for relocation costs,
24. assumption of the cost of a means of mass transport
25. employer contributions to pension funds, provident funds, company group insurance, employee promotion foundations, employee participation foundations,
26. employer contributions to foreign pension funds,
27. service charge for e-card,
28. trade union dues and works council fees,
29. reimbursed (repaid) salary, e.g. recalculated leave in the event of unjustified early departure or dismissal,
30. flat-rate income-related expenses for expatriates,
31. commuter flat-rate contribution, commuter euros and expenses for company transport,
32. exemption according to the notification to be presented to the employer
33. the increased pension deduction,
34. social insurance calculation basis of current payment
35. social insurance contribution from current payment (employee portion
36. social insurance calculation basis for special payment or other payment,
37. social insurance contribution from special payment or other payment (employee portion),
38. assessment basis for income tax, separated from current payment and special payment,
39. income tax on current payment,
40. income tax on special or other payment,
41. amount of the monthly family bonus taken into account,
42. assessment basis for employer contribution and surcharge on employer contribution,
43. employer contribution and surcharge on employer contribution,
44. local tax,
45. assessment basis for local tax,
46. assessment basis for company pension fund,
47. contribution to company pension fund,
48. the calendar months in which the employee is transported in company traffic,
49. the calendar months in which the employee used a vehicle provided by the employer for travel between home and place of work,
50. from the year 2021: number of working days in the home office on which the employee only performed his professional activity in the HO (possibly in the first half of 2021 in the estimation way, later. from July 2021 correct recording),
51. whether a voluntary payroll tax deduction was made even though there is no permanent domestic establishment of the employer
52. For calender years 2022 and 2023, additionally include the tax free cost of living bonus

Tip!

In the case of employees who are not subject to either limited or unrestricted domestic tax liability, a payroll account may not be maintained if the information can be found in other records kept by the employer. However, if a domestic employer sends employees abroad, it must keep a payroll account for them.

15. Subsidies for the employment of employees from AMS (Arbeitsmarktservice)

The AMS offers employers a series of other subsidies for hiring employees, for example

- Subsidy for the first employee
- "Come back" assistance:

  This subsidy subsidises the remuneration costs if preregistered unemployed people are hired.

- Subsidy for apprentice training:

  This subsidy is given for the training of certain apprentices. It consists of a subsidy for the costs of apprentice training.

- Solidarity premium model:

  A subsidy for the employment relationships of employees who reduce their normal working hours to a set amount. The subsidy can be claimed if a new employee is hired to work the extent of the reduction.

The responsible AMS office must always be contacted before the start of the employment relationship to be subsidised.

Caution!

There is no legal claim to subsidies. It is advisable to request a written subsidy guarantee or in advance to clarify the eligibility for funding.

Tip!
More information on subsidy options can be found at:
https://www.ams.at/unternehmen/service-zur-personalsuche/foerderungen

Further information can also be found here:
https://www.ams.at/organisation/formulare

The corresponding application forms can be found at:
https://www.wko.at/foerderungen

Appendix

1. Contribution principles and contribution rates for employees under social insurance law until 30.6.2022

Maximum contribution basis for employees

Employee	calendar daily	monthly	Special payments in the calendar year
Health insurance	€ 202,-	€ 6.060,-	€ 12.120,-
Accident insurance	€ 202,-	€ 6.060,-	€ 12.120,-
Pension insurance	€ 202,-	€ 6.060,-	€ 12.120,-
Unemployment insurance	€ 202,-	€ 6.060,-	€ 12.120,-
Chamber of labour	€ 202,-	€ 6.060,-	€ 12.120,-
Housing subsidy	€ 202,-	€ 6.060,-	€ 12.120,-

1.1. Maximum contribution basis for freelance employees

Freelance Employee	monthly (without SP)	monthly (with SP)	Special payments (SP) in the calendar year
Health insurance	€ 7.070,-	€ 6.060,-	€ 12.120,-
Accident insurance	€ 7.070,-	€ 6.060,-	€ 12.120,-
Pension insurance	€ 7.070,-	€ 6.060,-	€ 12.120,-
Unemployment insurance	€ 7.070,-	€ 5.850,-	€ 12.120,-
Chamber of labour	€ 7.070,-	€ 5.850,-	€ 12.120,-

1.2. Contribution rates for employees

	Blue-collar employees			**White-collar employees**		
	Employee	Employer	**Total**	Employee	Employer	**Total**
Health insurance	3.87%	3.78%	7.65%	3.87%	3.78%	7.65%
Accident insurance		1.10%	1.10%		1.10%	1.10%
Pension insurance	10.25%	12.55%	22.80%	10.25%	12.55%	22.80%

Unemployment insurance	2.95%	3.05%	6.00%	2.95%	3,05%	6.00%
Housing subsidy	0.50%	0.50%	1.00%	0.50%	0.50%	1.00%
Chamber of labour	0.50%		0.50%	0.50%		0.50%
Total	**18.07%**	**20.98%**	**39.05%**	**18.07%**	**20.98%**	**39.05%**
Pension Act		1.53%	1.53%		1.53%	1.53%
Nightshift Labour Act		3.80 %	3.80 %		3.80%	3,80%
Keyword	0.70%	0.70%	1.40%	0.70%	0.70%	1.40%

Explanations:

Unemployment insurance includes the insolvency remuneration protection act 0.1%

- Unemployment insurance contribution rate for low incomes pursuant to § 2 a AMPFG:

  for incomes up to € 1.951,- 0%
  for incomes above € 1.951,- to € 2.128,- 1%
  for incomes above € 2.128,- to € 2.306,- 2%
  with an income above € 2.306,- 3%

- The unemployment insurance contribution does not apply above the age of 60.

- No WBF and AK with special payments
- BMSVG at start of employment relationship from 1.1.2003 or transfer to "new" service
- Interest on late payment of contributions 4.63% Minority limit

1.3. Contribution rates for freelance employees

	Employee	Employer	Total
Health insurance	3.87%	3.78%	7.65%
Accident insurance		1.10%	1.10%
Pension insurance	10.25%	12.55%	22.80%
Unemployment insurance	2.95%	3,05 %	6,00%
Chamber of labour	0.50%		0.50%
Total	**17.57%**	**20.48%**	**38.05%**
Pension Act		1.53%	1.53%

Explanations:

- Since 1.1.2008, freelance employees are members of the Chamber of Labour and

are included in the ALV (including IESG supplement of 0,10%) and the BMSVG.

- Unemployment insurance contribution rate for low incomes pursuant to § 2 a AMPFG:

for incomes up to € 1.951,-	0%
for incomes above € 1.951,- to € 2.128,-	1%
for incomes above € 2.128,- to € 2.306,-	2%
with an income above € 2.306,-	3%

- The unemployment insurance contribution ceases at the end of the 60th year.

1.4. Marginal employment threshold

monthly	€518.44

	Blue-collar employees		White-collar employees		Freelance employees	
Total Remuneration	Employer	Employee	Employer	Employee	Employer	Employee
Employer < €777,66 Employee < €518,44	1.10%		1.10%		1.10%	
Employer > €777,66 Employee < €518,44	20.50%		20.50%		20.50%	
Employer > €777,66 Employee > €518,44	20.50%	14.12%	20.50%	14.12%	20.50%	14.12%
Employer < €777,66 Employee > €518,44	1.10%	14.12%	1.10%	14.12%	1.10%	14.12%

Explanations:

- As of 1.1.2017 the daily marginal earnings limit will no longer apply
- % 20.50% of unemployment insurance 1.10% and flat rate employer tax 19.40%
- Total employee remuneration > € 518,44 from multiple marginal employment relationships
- Self insurance for marginal employees in health and pension insurance monthly € 73,20

1.5. Employer payment obligations

FLAG employer contribution	3.70% if provided for in remuneration-forming regulations or internally otherwise 3,90%

Explanations:

- If the total monthly salaries exceed € 1.460,- otherwise reduction in contribution bases by € 1,095
- Ceases for employee from 60th year

Chamber of Commerce levy 2/Surcharge on employer contribution	
Burgenland	0.40%
Carinthia	0.37%
Lower Austria	0.35%
Upper Austria	0.32%
Salzburg	0.36%
Styria	0.34%
Tyrol	0.39%
Vorarlberg	0.33%
Vienna	0.36%

1.6. Employee payment obligations

Coinsurance for dependents / supplement for health insurance	3.40%

Explanations:

- 3.40% of the contribution basis (including special payments) for the insured for the penultimate year (or the current pension)

2. Important links

Work inspection Forms for registration obligations in employee protection	**https://www.arbeitsinspektion.gv.at/inspektorat/Kontakt_Service/Formulare/**
AMS (Labour Market Service) The AMS provides information for both employees and employers (e.g. subsidies).	**www.ams.at**
Obligation to Post Act Collection of laws on technical employee protection and working hours and use protection	https://www.wko.at/arbeitnehmerschutz/aushangpflichtige-gesetze
Employment of foreigners Information on the employment of foreign employees	https://www.wko.at/arbeitsrecht/auslaenderbeschaeftigung
Gross/net calculation Easy calculation of the net amount from the gross salary/remuneration	https://finanzrechner.at/netto-brutto-rechner
Social Ministry Service Information on the employment of registered disabled employees.	**https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/Berufliche-Teilhabe-von-Menschen-mit-Behinderungen.html**
Evaluation Information, checklists and documents on the subject of evaluation.	**http://www.eval.at/**

Subsistence level table Information brochure for employers and garnishees.	http://www2.wkstmk.at/wko.at/us/rssteuernundabgaben/Informationsbroschuere_fuer_AG_als_Drittschuldner.pdf
Collective agreement database The collective agreement database contains all collective agreement (framework) texts, all salary and remuneration tables and necessary additional information by industry and federal state.	**https://www.wko.at/kollektivvertraege**
Federal legal information system This database contains federal, state and municipality regulations as well as judiciary documentation.	**http://www.ris2.bka.gv.at/**
Social insurance: Form overview Comprehensive and current collection of forms from all social insurance agencies	**https://www.svs.at/cdscontent/?contentid=10007.843257&portal=svsportal**
Sample contract This database offers a large number of key samples and templates that you can use for personnel management .	**https://www.wko.at/wko-muster-vorlagen**