

Employment & Labour - Austria

Temporary Employment Act finally amended in line with EU directive

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Introduction

Although Austria has had a statutory framework in place since 1988 regulating the relationship between temporary workers, their employers and the entity to which they are assigned, the legislature was slow to implement the regulations set forth in the EU Directive on Temporary Agency Work (2008/104/EC) (which should have been in place by December 5 2011).

In order to adopt the directive's provisions, the Temporary Employment Act will be amended accordingly and signed into law, effective January 1 2013. The current law does not adequately reflect the directive's aim to achieve equal treatment of core staff and temporary workers, and also lacks some of the other protective mechanisms afforded under the directive.

Amendments to the act

The following stand-out amendments will be made to the act.

The client company of a temporary employment agency (known as a 'user undertaking' under the directive) will be deemed the employer for the purposes of anti-discrimination laws, including the Equal Protection Act. User undertakings must therefore not discriminate against temporary workers based on sex, ethnic origin, religion or belief, disability, age or sexual orientation. The revised Temporary Employment Act specifically details discrimination in the context of hiring a temporary worker or terminating his or her assignment by the user undertaking. As the worker's employer, the temporary agency must provide for adequate protection in case of discrimination. If termination of the assignment by the user undertaking is found to have been discriminatory and also prompted termination of the employment relationship of the temporary worker by the temporary work agency, the worker can sue his or her (former) employer for compensation, which will then have full recourse against the user undertaking.

Where a 'temporary' assignment exceeds four years and thus evolves into a permanent position, the user undertaking is deemed to be the employer within the scope of applicable pension scheme legislation. The undertaking must allow temporary workers to participate in the user undertaking's pension scheme under terms comparable with the pension rights granted to core staff. Following termination of the assignment, the temporary worker can transfer his or her pension entitlements to another pension scheme.

Entitlements to remuneration, annual paid leave and maximum working hours are further aligned with the respective rights of comparable core staff at the user undertaking.

Almost literally transposing Article 6(4) of the directive, the revised act provides that the user undertaking must give agency workers access to the amenities or collective facilities under the same conditions as workers employed directly by the undertaking - in particular, access to canteens, childcare facilities and transport services - unless unequal treatment is justified on objective grounds.

Despite not being specifically prescribed by the directive, the revised act details the implementation of a vocational training fund to be administered by social partners and financed by user undertakings (and co-financed by the Labour Market Agency). The revised act requires user undertakings to pay a fixed percentage of the temporary workers' regular pay to the fund, totalling:

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- 0.25% in 2013;
- 0.35% in 2014;
- 0.6% in 2015; and
- 0.8% from 2016 onwards.

The fund will provide grants and subsidies to (former) workers, support financing of vocational training and provide for allowances to user undertakings in exchange for the extension of temporary assignments. The fund will be monitored by the Ministry of Labour and have a controlling oversight board appointed. Certain exceptions apply (eg, funding through contributions by user undertakings will be suspended until a collective agreement concerning temporary agencies enters into force).

User undertakings must inform agency workers at least 14 days in advance of any termination of assignment if the assignment already exceeds three months. This requires additional planning and reduces flexibility on the part of user undertakings. The minimum requirements for the employment contracts between temporary agencies and temporary workers have been extended to include:

- the job level under an applicable collective agreement;
- the type of work envisaged;
- initial pay; and
- applicable collective agreements.

For cross-border assignments, the entitlements of foreign workers placed with Austrian users have been extended to include:

- annual paid leave;
- continued payment in case of sickness or accident;
- notice terms of comparable core staff;
- protection against dismissal and payment in lieu of notice; and
- applicability of the respective Austrian collective agreement, unless the provisions applicable in the worker's home country are more favourable.

Comment

Advocates for the interests of temporary agencies claim that the amendments will reduce flexibility and work to the detriment of agency workers, whom the act allegedly aims to protect; as a consequence, temporary staffing will decline and unemployment rise. Defenders of the amendment claim the opposite. Only time will tell how the modifications to the act play out in reality and whether the new rules manage to achieve equal treatment and reasonable workers' protection without throwing the baby out with the bathwater.

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