

Basics of Employment Law in Austria: Part III

Insights

4.12.16



This article is the third in a series which provides an overview of the basics of employment law in Austria and will focus on the legal requirements applicable to employee termination procedures.

I. Termination of Employment Contracts

Employment contracts in Austria may be terminated under the following circumstances:

- The fixed-term of employment as set forth in the contract for employment has expired;
- At any point during a trial or probationary employment period;
- By consent by both the employer and employee;
- By notice provided by either the employer or employee;
- Voluntary resignation by the employee; and
- Involuntary dismissal by the employer.

The specific termination procedures required by law vary dependent on whether the employee is considered a blue-collar or white-collar worker. Termination procedures pertaining to blue-collar works are typically set forth in the applicable Collective Bargaining Agreement and comply with the guidelines set forth in the applicable industry regulations. Procedures for terminating white collar employees are set forth in The Salaried Employees Act.

II. Termination Notice Requirements

Pursuant to The Salaried Employees Act, Austrian employers are required to provide white-collar

employees with at least six weeks' notice before terminating the employment relationship. However, the notice period increases with the increased tenure of the employee. An employer is thus required to provide two months' notice if the employee reaches his/her second year of employment, three months after the fifth year of employment, four months after the fifteenth year of employment and five months after the employee's twenty-fifth year of employment.

If the employee is a blue-collar worker, an employer must provide one week's notice if the employee has been employed for a period of 4 weeks, two weeks' notice after one year of employment, four weeks after five years of employment and six weeks of notice after ten years of employment.

However, an employee must only provide one month's notice regardless of his/her length of employment. The notice of termination by the employer or the employee is not required to provide a specific reason for the termination. Additionally, the employer is required to notify the Works Council before providing the termination notice to the employee or the termination will be considered void under the law. The Works Council can approve, object to or refrain from commenting on the termination. If the Works Council approves a termination, an employee cannot contest the termination unless the employee asserts that the termination was for an unlawful reason and commences an action with a Labor Court within one week of the termination.

The notice provided to the employee must also include a termination date which is a statutory or contractually pre-designated day, such as the last day of the calendar quarter. If an employment relationship is terminated consensually, the employer and employee are not bound by the legal notice requirements.

III. Termination for Cause Without Notice

An employer can implement an immediate termination of an employee without providing notice if there is substantial cause. Examples of legally recognized substantial causes are breach of loyalty, serious dereliction of the employee's job responsibilities, theft, insubordination and violation of an employee's non-compete agreement. Although the employer is still required to provide notice to the Works Council of the termination, it is not required to do so prior to the termination in the event of a for cause termination.