



GUIDE TO INDUSTRIAL RELATIONS IN AUSTRIA

1. INTRODUCTION TO THE AUSTRIAN SYSTEM OF “SOCIAL PARTNERSHIP”¹

In the past, Austria was characterised by a very strong system of co-operation between the major economic interest associations and the government. In Austria, this form of governance is commonly termed ‘social partnership’ (*Sozialpartnerschaft*), that is, a corporatism consisting of the comprehensive and co-ordinated representation of interests.

This social partnership is not limited to regulating labour relations and industrial relations but comprises almost all fields of economic and social policy within Austria.

The Austrian Trade Union Association (*Österreichischer Gewerkschaftsbund – ÖGB*), the Federal Chamber of Commerce (*Wirtschaftskammer Österreich – WKÖ*), the Federal Chamber of Labour (*Bundes-Arbeiterkammer – BAK*) and the Conference of Presidents of the Austrian Chambers of Agriculture (*Präsidentenkonferenz der Landwirtschaftskammern Österreichs*) are the four main interest associations involved in this social partnership. These main interest associations were true cornerstones of Austria’s political system in the past.

The social partnership between representative employee and employer organisations led to well-balanced relations between the government, employers, and trade unions. This resulted in an extremely low incidence of industrial disputes in Austria as compared to most other European countries in the past. By contrast, disputes in Austria were normally resolved through collective bargaining as opposed to open industrial confrontation (e.g. in the form of strikes). Social partners have been a decisive influence on the lasting

¹ Laimer, Hans Georg. *Employment Law - A Basic Primer*. 4th ed. NWV Verlag, 2019, 15 ff.

industrial peace in Austria. Accordingly, in 2017, no industrial action at all was recorded for the third time in a row in Austria.²

Mandatory membership for most private-sector employees in the Federal Chamber of Labour and for employers in the Federal Chamber of Commerce is a distinguishing feature of the Austrian social partnership. The Federal Chamber of Commerce concludes most of the collective bargaining agreements in Austria on the side of employers. This combination of compulsory membership in the Federal Chamber of Commerce and the conclusion of most collective bargaining agreements by it means that 95% of all employees in Austria are statutorily covered by a collective bargaining agreement.³

Founded on these institutionalized pillars, a well-established system of 'co-determination' also exists in Austria, which ensures employee participation at plant-level in the workplace. Accordingly, works councils represent employees at plant-level when dealing with employers and protect the interests of employees with regard to issues affecting work practices.

The Austrian government consisted from December 2017 until May 2019 of the conservative People's Party (*ÖVP*) and the far-right Freedom Party (*FPÖ*). Under this government, the social partnership, as it was understood in the past, was contested. Protagonists of both parties demanded that the social partnership be limited. The *FPÖ* in particular also requested that mandatory chamber membership be ended, something which may strongly affect the high-level of collective bargaining agreement coverage in Austria.

² Krenn, M., C. Hermann, G. Adam, and B. Allinger. "Living and Working in Austria." Living and Working in Austria | Eurofound. July 27, 2018. Accessed October 12, 2018. <https://www.eurofound.europa.eu/country/austria>; WKO Statistik – Streiks in Österreich. Accessed October 12, 2018. <http://wko.at/statistik/Extranet/Langzeit/lang-streiks.pdf>.

³ Krenn, M., C. Hermann, G. Adam, and B. Allinger. "Living and Working in Austria." Living and Working in Austria | Eurofound. July 27, 2018. Accessed October 12, 2018. <https://www.eurofound.europa.eu/country/austria>.

In September 2018, the government in the composition *ÖVP/FPÖ* introduced amendments to the working time law while bypassing consultation at the social partnership level. It remains to be seen how long this shift of power away from the social partnership will last and what this will mean for the social peace in Austria as the unions have already announced initial industrial action. Under the current government, which consists of the *ÖVP* and the Green Party ("*Die Grünen*"), the role of the social partnership may be strengthened again.

2. THE AUSTRIAN SYSTEM OF INDUSTRIAL RELATIONS⁴

The Austrian Labour Constitution Act (*Arbeitsverfassungsgesetz - ArbVG*) provides the main source of provisions for industrial relations in Austria. The Act provides the basic provision on the applicable collective employment law in Austria. It deals with issues relating to different aspects of works councils and their members such as the thresholds for establishing a works council, active and passive suffrage, shop agreements and collective bargaining agreements.

The act also contains important provisions on general protection against dismissal, which, historically, has primarily been arranged as a right of the workforce and not of the individual employee directly.

As stated above, the number of industrial conflicts in Austria hovers close to zero, with no industrial conflict having been seen at all in the last three years. The Austrian state always preserved its relative neutrality in industrial conflicts in the past. Austrian law, therefore, lacks specific regulations regarding the framework and resolution of industrial disputes.

⁴ Laimer, Hans Georg. *Employment Law - A Basic Primer*. 4th ed. NWV Verlag, 2019, 17 ff.

Although Austria is a signatory to various international conventions which guarantee the right to strike (*Streikrecht*), Austrian law does not explicitly recognise the right to strike. Strikes aimed directly at the state are considered unlawful.

3. COLLECTIVE BARGAINING AT FEDERAL LEVEL⁵

A collective bargaining agreement under Austrian law is a written agreement entered into between employers' associations and employees' associations. Currently, around 95% of employees in Austria are covered by a collective bargaining agreement. Thus, in Austria, as compared to other countries, collective bargaining agreements are one of the most important sources of employment regulations.

The provisions of a collective bargaining agreement can be divided into those which regulate working conditions between employers and employees on the one hand and those which regulate the legal relations between the parties to the collective bargaining agreement on the other.

Collective bargaining agreements are, as a rule, concluded at the sectorial level for all businesses and all employees of an industry. A collective bargaining agreement contains mandatory provisions, which, within the scope of the collective bargaining agreement, directly affect each single employment relationship. Accordingly, these provisions must be understood as having a direct impact on the individual employment contract while existing in parallel to the agreement itself. The provisions of a collective bargaining agreement may neither be revoked nor restricted to the disadvantage of the employee by an individual agreement or a shop agreement.

⁵ Laimer, Hans Georg. *Employment Law - A Basic Primer*. 4th ed. NWV Verlag, 2019, 19 f.

In general, collective bargaining agreements are concluded on the side of employees by a specific trade union or the respective umbrella organisation, the Austrian Trade Union Association. On the employers' side, the Austrian Federal Chamber of Commerce or its respective branches generally conclude collective bargaining agreements in Austria.

Historically, collective bargaining agreements mainly regulated the issue of remuneration. Due to the fact that collective bargaining agreements encompass most employees in the private sector in Austria, a certain kind of minimum wage exists in the country, though there is no legislation in this respect. In 2017, the social partners announced that they would implement a minimum wage of €1,500 gross across all sectors through the collective bargaining agreements in Austria until 2020.⁶

Closely linked to the issue of remuneration are provisions in collective bargaining agreements concerning overtime payments and working hours. Moreover, the scope of a collective bargaining agreement often includes issues such as additional protection against dismissal (for example, longer notice periods and different termination dates), provisions with regard to parental leave, a sabbatical or gap-year, home office and teleworking and special remuneration for longstanding service.

For blue-collar workers and white-collar workers, there are often separate collective bargaining agreements in place which deal with the special needs of each group. This division naturally stems from the different tasks to be carried out by the respective employees. Collective bargaining agreements for blue-collar workers, for example, may provide more detailed regulations with regard

⁶ Austria: Social Partners Agree on €1,500 Monthly Minimum Wage for All Sectors." Eurofound. Accessed October 01, 2018. <https://www.eurofound.europa.eu/publications/article/2017/austria-social-partners-agree-on-eu1500-monthly-minimum-wage-for-all-sectors>.

to health protection due to the impact of heavy machinery utilised to carry out the specific tasks which are required.

The applicable collective bargaining agreement for a specific business is generally based on the decision of the Austrian Federal Chamber of Commerce regarding the mandatory membership of the business within the employer's association (*Kammer-Fachorganisation*). Its applicability further depends on the actual activity carried out by the business.

Pursuant to section 9 of the Labour Constitution Act, the policy that only one single collective bargaining agreement applies to one undertaking generally applies in Austria (*Tarifeinheit*). However, if the employer has mandatory memberships in more than one of the employers' associations owing to statutory provisions, more than one collective bargaining agreement may apply to the employer.

It is important to note that only one collective bargaining agreement will apply to an individual employment relationship in each case. When there is an organisational division at the operational level of the business (for example, principal and ancillary businesses), different collective bargaining agreements may apply to the employer, but never to the individual employee.

4. EMPLOYEE REPRESENTATION BY WORKS COUNCIL⁷

4.1. General

Austrian law provides employees with the right of freedom of association and the right to engage in union activities. The unionisation rate of the active

⁷ Laimer, Hans Georg. *Employment Law - A Basic Primer*. 4th ed. NWV Verlag, 2019, 35 ff.

workforce in Austria amounted to 26.9% in 2016, which is equivalent to 990,700 members.⁸

Compared to other countries, direct trade union representation at plant level does not exist in Austria. At the plant level, employees are represented by works councils which are elected from the workforce. Thus, there is a clear division between works councils acting at the level of the business and trade unions which are active above the level of a single business in Austria.

In all businesses, the employment of five or more employees on a permanent basis requires the establishment of a works council under the Austrian Labour Constitution Act. However, the creation of a works council is subject to a respective request submitted by the employees or a trade union.

As soon as the threshold of at least five permanent employees (excluding managing directors, certain family members and certain senior employees) has been reached, employees may set up a works council at the business immediately.

When each of the main groups of employees (white-collar and blue-collar workers) has fulfilled the threshold of five permanent employees, different works councils for each group of employees may be set up by each of the groups. When one undertaking comprises several businesses which form an economic entity that is administered centrally and works councils have been established in the different businesses, an additional central works council (*Zentralbetriebsrat*) may be created. The central works council is established and populated by the works councils at the business level.

⁸ Krenn, M., C. Hermann, G. Adam, and B. Allinger. "Living and Working in Austria." Living and Working in Austria | Eurofound. July 27, 2018. Accessed October 12, 2018. <https://www.eurofound.europa.eu/country/austria#actors-and-institutions>.

If legally independent legal entities are administered centrally, they may form an affiliated group (*Konzern*). In such a group, a so-called group works council (*Konzernbetriebsrat*) may be established when more than one business within that group has a works council. Finally, businesses and affiliated groups in different countries within the European Union or the European Economic Area (EEA) may establish a European Works Council (*Europäischer Betriebsrat*).

Active suffrage for the works council applies to all employees of a business who are at least 18 years old and are employed in the respective business on the day of the notice of the election as well as on the day of the election of the works council itself. All works councils established since 1 January 2017 are elected to serve for a term of five years.⁹

The size of the works council depends on the number of employees employed by the business. The law stipulates the following thresholds:

- | Five to nine employees:
 - | One member
- | Ten to 19 employees:
 - | Two members
- | 20 to 50 employees:
 - | Three members
- | 51 to 100 employees:

⁹ Previously the term was four years.

- | Four members
- | For more than 100 employees:
 - | Another member is added to the works council for every additional 100 employees; fractions of 100 are rounded up to the next 100
- | For more than 1000 employees:
 - | Another member to the works council is added for every additional 400 employees; fractions of 400 are rounded up to the next 100

Employees may be elected as members of the works council (passive suffrage) if they are 18 years of age or older and have already been employed by the employer for at least 6 months.

As the works council is not a trade union body directly, membership in a trade union is not a requirement for passive suffrage. Thus, non-trade unionists can run for election as well as trade unionists.

Exclusions apply with regard to spouses of the owner of the business and home workers. These employees are excluded from becoming a member of the works council even when the requirements for passive suffrage are met.

As the members of the works council are elected from the workforce, special protection against discrimination and dismissal is provided by law.

Members of the works council and, in general, employees involved in the representation of the workforce are protected against any constraint or discrimination by the employer. The dismissal of these employees is only possible after obtaining prior consent from the appropriate labour and social court. The following employees enjoy this special protection:

- | members of the election board,
- | candidates for the works council election and
- | elected members of the works council.

4.2. Rights and the participation of the works council

4.2.1. INFORMATION RIGHTS

As a rule, the works council supervises compliance with laws relating to the business' employees. This includes the right of the works council to inspect the records kept by the business on employees' remuneration and its calculation as well as other documents concerning employees (section 89 of the Labour Constitution Act).

Furthermore, the owner of the business has to provide information on relevant business matters once every quarter. The works council may also request to receive this information once a month (section 92 of the Labour Constitution Act).

The works council is also entitled to request that the owner of the business remove irregularities and carry out necessary measures. If required, the works council may also refer such matters to the competent authorities outside of the business (section 90 of the Labour Constitution Act).

The owner of the business is to notify the works council without any prior request about the types of computer assisted records that are held on employees and is to identify data which has been designated for processing and

transmission (subsection 91(2) of the Labour Constitution Act). On request, the works council is entitled to verify this information. If a shop agreement is necessary for the computing of employees' data, the consent of the works council has to be obtained.

4.2.2. SOCIAL MATTERS

In all matters of safety and health protection, the works council is entitled to be informed, to obtain information and to discuss it with the owner of the business. This includes, inter alia, participation in the management of in-house training, educational facilities and welfare facilities. The works council and the owner of the business may agree on the form and scope of educational and welfare facilities in a shop agreement.

4.2.3. PERSONNEL MATTERS

Participation in personnel matters comprises, inter alia, the recruitment of new staff, determination of remuneration in a particular case, relocations, disciplinary measures, allocation of company-owned residences and promotions. In this regard, the works council may propose to the owner of the business the advertisement of vacancies on the one hand. On the other, the owner of the business has to inform the works council of the number of new employees being recruited and the positions to be filled. The works council may further request deliberation on the filling of an individual position.

The owner of the business has to inform the works council about each employee who is hired. The works council has to be provided with an indication of the remuneration, the type of work and the relevant salary scheme each time someone is recruited (subsection 89(1) of the Labour Constitution Act).

These rights of the works council also apply to existing staff. The information, therefore, has to be provided for all employees. The consent of the employee is not required for the works council to obtain this information. However, to access the personnel file of an employee, the works council has to obtain the prior consent of each employee affected.

The permanent relocation (*dauerhafte Versetzung*) of an employee is deemed to occur where an employee is assigned to another workplace for 13 weeks or longer. The owner of the business has to notify the works council about any permanent relocation of an employee.

The prior consent of the works council is required when a permanent relocation entails a reduction in remuneration or worsening of other working conditions. The relocation will not be legally effective without the prior consent of the works council. This holds true when the employee accepts that his or her working conditions will change for the worse in the future. However, if approval by the works council cannot be obtained, the employer may institute judicial proceedings. The court will then approve the relocation of the employee where it is objectively justified.

Besides the protection against relocation that is incorporated into the Labour Constitution Act, it must also be determined whether a relocation is covered by the individual employment agreement.

The employee's approval is required for any relocation which alters the employment agreement. The employee's consent may not be substituted by the consent given by the works council, which may be required additionally.

However, if the relocation is covered by the individual employment agreement, the employer is permitted to order a relocation of the employee unilaterally. Whether or not a relocation alters the employment agreement has to be assessed based on the agreed terms of employment in each individual case.

4.2.4. OTHER FIELDS OF CO-OPERATION

The termination of employment relationships is one of the most important fields of co-operation between the works council and the owner of the business. The employer is to notify the works council prior to giving notice to an employee.

The works council is to provide a statement on the intended termination of employment within one week of receiving notice of the employer's intention to terminate the employment of an employee. The works council has three different options as to how to react to the notice. The works council may object to the termination of the employment, it may explicitly approve the termination of the employment or it may refrain from providing any comment. The ways in which an employee may challenge the termination of employment depend on the respective reaction of the works council. If the termination of employment has been objected to by the works council or the works council has refrained from providing any comment, the employee may challenge the termination of employment for being socially unfair. However, if the works council has approved the termination of employment, the employee may not challenge the termination of employment for being socially unfair.

Any notice of termination of employment issued without notifying the works council or which is still within the one-week notice period without the works council having provided a respective statement is null and void.

Shop agreements are agreements at plant level. These agreements are entered into between the works council and the owner of the business. Shop agreements must be made in writing and may regulate matters which either the law or collective bargaining agreements specifically reserve for shop agreements. Certain measures (e.g. certain control systems, certain personal data systems, disciplinary measures, etc.) must be determined by a shop agreement before they can be implemented. Thus, the owner of the business has to obtain the consent of the works council to implement these measures. There are different

types of shop agreements depending on the topic. Please see below for further information on shop agreements.

Furthermore, the owner of the business is obliged to notify the works council of any intended alteration within the company. This information has to be provided far enough in advance for the works council to be able to deliberate on the alteration. The obligation applies to any limitation of operation, shutdown or relocation of the company, mass redundancy, merger with other companies or change of the business purpose or organisation. The introduction of new processes or considerable restructuring measures may also qualify as such an alteration, which, accordingly, the works council is to be notified of in advance.

4.2.5. EXEMPTION FROM WORK

Depending on the size of the business and upon request by the works council, individual member of the works council have to be fully exempted from work. The following thresholds apply with regard to the full exemption of members of the works council from work:

- | Businesses with more than 150 employees:
 - One member of the works council
- | Businesses with more than 700 employees:
 - Two members of the works council
- | Businesses with more than 3,000 employees:
 - Three members of the works council
- | For each further 3,000 employees:

- One further member of the works council

If a central works council is established, one member of the works council can be exempted from work. However, the central works council is only entitled to this where the individual businesses that make up the undertaking do not meet the threshold of 150 employees individually, but do employ more than 400 employees collectively. In this case, a member of the central works council can be exempted from work even if members of other works councils in the business which meet the above thresholds are exempt from work. The maximum number of members of the central works council who may be exempted from work is one.

Members of the (central) works council who are exempted from work are entitled to full remuneration for the period of the exemption.

If separate works councils for white-collar and blue-collar workers are established, the thresholds apply to each group's works council separately.

To be entitled to an exemption, the thresholds have to be met permanently. However, temporal fluctuations neither grant entitlement to an exemption nor terminate entitlement to it. Therefore, what is decisive is whether or not these thresholds are met for several consecutive months.

PROCEDURE

The exemption from work has to be requested by the works council as an overall body and not by a single member or the chairperson. The request has to be understood as a notification provided to the owner of the business. The owner of the business neither has to express his/her consent nor does he/she have to agree with the exemption of the member(s) of the works council. Moreover, the owner of the business is not entitled to insist that only one member of the works council be exempted if the threshold for the exemption of further members of the works council is met. On the contrary, if the works council does not request

an exemption, the owner of the business cannot exempt any member of the works council from the obligation to provide work.

Besides full exemption from work, individual members of the works council also can take time-off in accordance with section 116 of the Labour Constitution Act if this is necessary to perform their duties as members of the works council.

The request to the owner of the business has to be in writing and has to include the name(s) of the member(s) of the works council or member(s) of the central works council who is/are to be exempted from work based on the decision of the works council or the central works council. Where a member of the central works council is to be exempted from work, the request also has to be issued to the central management body. The exemption becomes effective immediately on issuing the request to the owner of the business.

SELECTION OF THE MEMBER OF THE WORKS COUNCIL TO BE EXEMPTED FROM WORK

It is solely the works council's decision as to whether or not a request for an exemption from work is issued and which member(s) of the works council is/are chosen for exemption from work.

When selecting a member of the works council to be exempted from work, there are no ranking criteria (e.g. the order in which they were nominated) which apply or which need to be considered. Thus, any member of the works council may be chosen and there exists no obligation, for example, to choose the chairman of the works council. Moreover, business interests as well as work which is necessarily required from certain members of the works council do not have to be considered by the works council either.

EFFECTS OF AN EXEMPTION FROM WORK

When the exemption from work comes into effect, the obligation of the member of the works council to provide work is made dormant. This, however, does not mean that certain obligations arising from the employment relationship (e.g. obligation to secrecy, non-competition obligations, etc.) do not continue to apply.

Nevertheless, the member of the works council exempted from work has no obligation to inform the owner of the business when and to what extent he/she undertakes works council activities.

Moreover, since an exempted member of the works council has no obligation to provide work whatsoever (cf. Austrian Supreme Court, 8 ObA 219/95), the owner of the business does not have the right to control the exempted member of the works council with regard to any absence from work. This even holds true if this member of the works council has voluntarily provided work.

Nevertheless, the member of the works council exempted from work is still obliged to notify the owner of the business in case of absence (e.g. holidays, illness, etc.) as well as to be loyal (especially with regard to non-competition obligations). These obligations remain applicable despite the exemption from work.

An exempted member of the works council is still entitled to holiday. Moreover, at the end of his or her employment, an exempted member of the works council is entitled to compensation for any unused holiday (cf. Austrian Supreme Court, 8 ObA 20/08m).

Members of the works council who are not exempted from providing work are entitled to time off which is required for works council activities according to section 116 of the Labour Constitution Act even where other members of the works council are exempted from providing work.

END OF THE EXEMPTION FROM WORK

The exemption of a member of the works council from work ends if one of the following circumstances arises:

- | If the particular member of the works council ceases to be a member of the works council.
- | If the works council renounces the exemption in writing.
- | If the thresholds for the exemption of members of the works council from work are not met anymore for a longer period of time.

The works council may decide to revoke the exemption of a member of the works council at any time and to replace him/her with another member of the works council (e.g. in case of long-term illness or holiday). Moreover, together with the appointment of the exempted members of the works council, the members of the works council may also appoint substitutes in advance.

4.2.6. TERMINATION OF THE EMPLOYMENT OF MEMBERS OF THE WORKS COUNCIL

To protect the representation of the workforce, special protection against termination of employment applies to members of the works council and employees who are active in the election process of the works council. These employees enjoy special protection against termination of their employment. Therefore, it is generally the case that prior approval from the labour and social court needs to be obtained for both termination by giving notice and termination with immediate effect for cause to be enforceable.

DURATION OF THE SPECIAL PROTECTION AGAINST TERMINATION OF EMPLOYMENT

Employees who are members of the election committee of the works council (*Wahlvorstand*) as well as employees who are candidates for a works council election enjoy protection against termination of their employment. This protection commences with their appointment or candidacy and lasts until the lapse of the period during which the election can be challenged (= one month starting from the day on which the election result was announced).

For elected members of the works council, this special protection against termination of their employment begins with the member of the works council accepting the election. Thus, the special protection against termination of employment does not commence with the establishment of the works council but prior to that. This protection ends three months after membership of the works council ceases. Where the business shuts down, the special protection against termination of employment ends with the effective shut down too.

Substitute members of the works council may also enjoy special protection against termination of employment. This special protection against termination of employment for substitute members who have acted for a period of at least for two consecutive weeks for another member of the works council who was unable to act ends three months after the end of this substitute activity. Where members of the works council continue to perform works council activities beyond the end of the current works council's term (e.g. where the election of the new works council has been contested, etc.), the special protection against termination of employment ends three months after the end of this activity.

CAUSES FOR TERMINATION OF EMPLOYMENT BY NOTICE, THEREBY ADHERING TO THE APPLICABLE NOTICE PERIOD AND END DATE

It is possible to terminate the employment of a member of the works council by giving notice, whereby the applicable notice period and end date may only be

approved by a court where a specific cause as stipulated by law is evident. These causes, as stipulated by section 121 of the Labour Constitution Act, are:

- | The business is permanently shut down or restricted or parts of the business are shut down.
- | The specific member of the works council is not capable of rendering the services agreed upon anymore.
- | The specific member of the works council culpably fails to render his/her duties for a significant period of time.

No other cause can justify the termination of the employment of a member of the works council or another person enjoying this special protection by giving notice.

Termination of employment by giving notice where the member of the works council is incapable or has culpably breached his or her duty is only justified and, as a result, needs to be approved by a court if his or her further employment (e.g. owing to a change in the services carried out) is unacceptable for the employer. Furthermore, the court may only approve the termination in case of a restriction of the business if further employment in another position, if so requested by the member of the works council, is not possible without significant damage for the employer.

TERMINATION OF EMPLOYMENT WITH IMMEDIATE EFFECT WITH CAUSE

If a member of the works council has committed certain wrongdoings stipulated by law, a court may approve the termination of the employment of the member of the works council with immediate effect with cause. These wrongdoings, as stipulated by section 122 of the Labour Constitution Act, are:

- | Intentional fraud at the time of concluding the employment agreement (e.g. counterfeit certificates).

- | Certain criminal offences committed intentionally.
- | Disloyalty or unauthorized acceptance of benefits from third parties.
- | Disclosure of business or trade secrets or detrimental side businesses.
- | Violence or defamation of character against the owner of the business, the owner's family present in the business or employees of the business.

However, the immediate termination of the employment is only justified if the further employment of the member of the works council is unacceptable for the employer. If his/her further employment is reasonable for the employer, the court does not have to approve his/her termination (subsection 122(2) of the Labour Constitution Act).

The approval by the court has to be obtained by the employer without any undue delay after having been informed of the wrongdoings by the member of the works council and prior to the termination of employment. However, in case of an intentional criminal offence as well as violence or defamation of character, the employer may terminate the employment with immediate effect with cause after having been informed of the cause and may obtain the approval of the court retroactively. In the latter case, either the approval or the rejection by the court will have a retroactive effect to the point in time at which the employer terminated the employment with immediate effect with cause.

4.3. Shop agreements

Shop agreements are agreements entered into between the works council and the owner of the business. These agreements have to be in writing to be effective. Moreover, they have to be announced in the business. Self-evidently,

a shop agreement may only be entered into where a works council has been established for the business in question.

The provisions of shop agreements may neither contravene mandatory statutory provisions nor mandatory collective labour law. Furthermore, shop agreements are to be posted (announced) prominently in the business so as to grant employees easy access to and knowledge of their content. Individual agreements with employees which deviate from shop agreements are only valid when they are more favourable for the employee or the matter under consideration is not regulated in the particular shop agreement.

Shop agreements may only regulate the specific matters which are reserved for shop agreements either by law or by the applicable collective bargaining agreements.

Moreover, different types of shop agreements exist depending on the topic dealt with by the shop agreement.

Shop agreements may therefore be either necessary or optional. If a shop agreement is necessary, the measure (e.g. certain control systems, certain personnel data systems, disciplinary code, etc.) must not be implemented without the prior conclusion of a shop agreement. If the shop agreement is optional, the measure may also be implemented without the consent of the works council.

Moreover, certain necessary and certain optional shop agreements are also referred to as enforceable shop agreements. When a shop agreement is enforceable, a special conciliation body may be addressed by either the works council or the employer with regard to the conclusion or termination of the shop agreement. Thus, the consent of one of the parties to the shop agreement to the conclusion or termination of such an enforceable shop agreement may be substituted by the decision of the conciliation body.

Moreover, an aftereffect applies in the case of optional shop agreements which are not enforceable. Where such a shop agreement is terminated by any of the parties by giving notice, the legal effects of the shop agreement remain in force for all employment relationships that were covered by the shop agreement at the time of the termination. The aftereffect ends if a new shop agreement is concluded on that matter or an individual agreement with the individual employee is concluded in that regard. However, according to recent case law, the aftereffect is not mandatory and therefore can be ruled out between the parties to the shop agreement within the shop agreement (c.f. Austrian Supreme Court 9 ObA 18/16m).



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