LABOUR LAW

Die Gastronomie
STEIERMARK

What are laws and ordinances that are subject to notice?

Certain important regulations of labour law must be put up or displayed in the company at a place which is easily accessible for employees so that those interested can examine them. Electronic provision is also permissible.
This obligation concerns, among others, the above mentioned laws and the collective agreements for the catering industry.
You can purchase a complete compilation of acts subject to notice in well-assorted bookstores or via the Internet (www.wko.at).
The *Jugendschutzgesetz* (Austrian Children and Youth Protection Act) can be ordered from the professional group. Tel.: +43(0)316/601-425; fax: +43(0)316/601-1760; gastronomie@wkstmk.at.

Hiring employees

An employee is anyone who is reliant on another for work or services, namely

- in accordance with their instructions and
- personally and economically dependent

The following may not be employed:

- Children (whoever has not yet completed compulsory education – 9th school year – is deemed to be a child; therefore basically anyone under age 15).
- Work in areas in which foodstuffs will be handled is prohibited for persons who suffer from an illness as well as carriers of contagions which can be transmitted through foodstuffs, as well as persons with, for instance, infected wounds, dermal infections, festering sores or diarrhoea, as far as there is merely the slightest possibility that foodstuffs will be contaminated directly or indirectly with pathogenic microorganisms (*Lebensmittelhygieneverordnung* (Austrian Foodstuff Hygiene Ordinance)).
- Foreigners without appropriate permits

Conclusion of employment contracts

The conclusion of employment contracts is basically informal.
This means that a verbal agreement or even merely "conclusive actions" (=actual rendering of services and acceptance through the proprietor) are sufficient for the valid realisation of an employment status.

What is a "*Dienstzettel*"?
A so-called "*Dienstzettel*" (i.e. statement of terms and conditions) has to be issued each time a new employee is hired.
A *Dienstzettel* is understood to be a written record of the realisation of an employment status, which in contrast to an employment contract is not signed by the employee. Through this signature the person merely confirms that the record has been handed over to him/her.

The *Dienstzettel* must include the following details:

- Name and address of employer
- Name and address of employee
- Start of employment

- The end of employment (with employments for a certain time)
- Length of notice period, termination date
- Ordinary place of work
- Possible classification
- Intended utilisation
- Starting salary (basic remuneration plus special payments)
- Extent of annual holidays
- Stipulated daily and weekly normal working hours
- Collective agreement
- Severance payment fund

For reasons of legal certainty it is recommended to immediately conclude a written employment contract instead of the delivery of a *Dienstzettel*.

The employment contract has a better probative force for the employer in the event of legal disputes. It is regarded as a written document in court.

Probationary period

An employment status can be terminated at any time within the probationary period by the employer as well as by the employee without statement of reasons, and without periods or dates having to be taken into consideration.

The probationary period in the hospitality industry:

	How is it to be stipulated?	**Period**
Worker with unlimited employment	Applies automatically	14 days
Worker with fixed-term employment	Has to be explicitly stipulated in the employment contract	Up to 14 days
Apprentices	Applies automatically	3 months
Salaried employees	Has to be explicitly stipulated in the employment contract	Up to one month

Longer periods stipulated in the employment contract are invalid.

Hiring foreign workers

EU or EEA citizens are not regarded as foreigners. In principle, they may be employed like residents. However, beware with regard to national subjects from Romania and Bulgaria. Here, Austria has stipulated transitional periods for opening the labour market.

If they are not spouses or children of an Austrian citizen or another EEA citizen, **national subjects of non-EEA countries** may not be employed within the country without official permits.

They require:

- a permit for the residence in accordance with the Austrian Aliens' Act (FrG), and
- a permit in accordance with the Austrian Foreigners' Employment Act (AuslBG)

In accordance with the Austrian Foreigners' Employment Act, the permit is normally granted for a certain job (= employment permit).

If they have already worked for a longer period in Austria, the foreigner is entitled to a work permit, a *Befreiungsschein* (certificate of exemption) or a so-called *Niederlassungsnachweis* (residence permit 'proof of establishment').

The Public Employment Service (AMS) is responsible for issuance of the permit. Foreigners without valid permits may not be employed.

Checks occur through the bodies of the central coordination agency for the control of illegal employment at the Federal Ministry of the Interior (BMI), which can impose severe penalties (up to € 10,000 per illegally employed jobholder, even higher in case of recurrence).

Working time regulations in the hospitality industry

Daily working time:

- Basically a **five-day week**
  Work on the 6th day is possible, but has to be explicitly stipulated. But at any rate, the working hours performed on the 6th day are to be compensated with a 50 percent supplement to the basic wage.

- A **daily normal working time** of 8 hours basically ensues with distribution to five days.

Weekly working time:

Weekly normal working time (= working time without overtime) is 40 hours per week.

Break:

Half-hour break, if the daily working time amounts to a total of more than 6 hours

Rest period:

Employees are entitled to a minimum rest period of 11 hours after completion of daily working hours.

Public holidays:

If work is performed on a legally recognised public holiday, the employee who works on this day is due to receive holiday remuneration (a 100% supplement). Compensatory time off in the equivalent extent can also be stipulated instead of the payment of holiday remuneration.

Weekly time off:

At least 36 hours

Overtime:

Overtime is considered as any amount of work which exceeds the daily or weekly normal working time. The normal working time is specified with 8 hours a day or 40 hours in the working week.
Overtime can only be performed after the normal working hours and must be explicitly arranged.

Upon existence of an increased labour demand, a maximum of 15 overtime hours per week may be performed (maximum of 55 hours worked per week) in the hospitality industry without authorisation of the *Arbeitsinspektorat* (Labour Inspectorate). The daily maximum working time of 10 hours (exception of 12 hours with a 4-day week) may not be exceeded, however.

A general prohibition of overtime exists for expectant and nursing mothers as well as for adolescents.

Working overtime is basically voluntary. But an obligation of the employee for working overtime can be stipulated from the outset (employment contract).

The remuneration for working overtime consists of:
- Normal hourly wage (gross monthly wage: 173)
  and
- Overtime supplement
  This amounts to 50% of the normal hourly wage.

Holiday leave:

The extent of holiday leave per working year with a period of service of less than 25 years amounts to 5 weeks, and increases to 6 weeks after completion of the 25th year of service.

Record-keeping obligations

In order to enable the checking of working time regulations and other occupational health and safety regulations, the law provides an abundance of employer record-keeping obligations. In particular, records are to be kept concerning the working times (actually performed working hours, day and time, breaks), rest periods and holiday leave (imputation of previous periods of service, holiday leave entitlement, holiday leave actually utilised, amount of holiday leave remuneration and disbursement date).

The law does not give any information on the manner in which working time records should be kept. The employee should, at any rate, confirm the accuracy of the working time records with their signature. As a result, the employer can protect himself against the unwarranted assertion of overtime.

- The records will be consulted by the Labour Inspectorate as the basis for the review of working time regulations. Punitive sanctions will be imposed on the employer in the event of improper management.

- They will also be randomly audited by the district health insurance fund for review of social insurance contributions.

Example of a working time record:

WORKING TIME RECORDS

Employee: .....

Month	Coming	Going	Break
1.			
2.			
3.			
4.			
5.			
6.			
7.			
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29.			
30.			
31.			

....., on.....

Place Date

..... **.....**

Examined and acknowledged as correct

Employer

Employee

Termination of employment status

Notice of termination

The notice of termination does not require any consent of the other contracting party. It obtains efficacy as soon as it reaches the addressee. As a rule, a notice period and a termination period are to be observed.

Neither the collective agreement nor the law provide for special formalities. A written notice of termination is advisable for reasons of preservation of evidence.

The notice period amounts to:
- With WORKERS: generally 14 days
- With SALARIED EMPLOYEES:
  - Notice of termination through the employee: 1 month
  - Notice of termination through the employer: depending on the duration of employment status, 6 weeks to 5 months

The deadline starts with receipt of the notice of termination.

Termination period:
- With WORKERS: possible at any time (no termination period prescribed)
- With SALARIED EMPLOYEES: normally on the 15th day or the last day of a month

Dismissal

Dismissal is the unilateral termination of employment status through the employer. In contrast to notice of termination, in the event of a dismissal, the employment status ends immediately with its pronouncement.

However, the dismissal has to be received by the employee.

Furthermore, in contrast to notice of termination, dismissal always requires a certain reason, such as:
- Misleading the employer (e.g. through falsified work cards or references)
- Concealment of a simultaneously existing employment status
- Inability to perform stipulated work
- Habitual drunkenness (after repeated fruitless admonishment)
- Theft, embezzlement or other criminal offences
- Betrayal of a trade or company secret
- Operation of a secondary business that has a negative influence on the employment relationship
- Leaving the workplace without authorisation
- Persistent breach of duty
- Arrest in prison for longer than 14 days

The dismissal has to be immediately pronounced by the employer as soon as they have acquired knowledge of the cause of dismissal.

In cases of doubt it is recommended to obtain expert advice beforehand (e.g. through calling the Austrian Federal Economic Chamber). This is especially important, since a once pronounced dismissal can no longer be unilaterally “retracted”.

So that the employee cannot object afterwards that a dismissal was not “immediately” pronounced on account of inquiries and is thereby inoperative, the concerned employee should be told that one does not agree with the action, and after consultation with the special interest group a dismissal will be pronounced (orally or in writing) if necessary.

Once the dismissal is pronounced, the employment status is thereby immediately terminated. This also applies if there is no cause of dismissal whatsoever. But in the event of an unsubstantiated dismissal, the employee has additional claims. Particularly in the event of an unjustified dismissal, an employee is entitled to pay in lieu of notice. This represents liquidated damages for the non-compliance of the notice period through the employer.

Special protection against dismissal exists for

- recruits
- pregnant women
- employee representatives
- trainees

Special grounds for dismissal are required in these cases and the dismissal requires prior legal approval (except in the case of trainees, although the dismissal must here be provided in writing).

Amicable termination

In principle, the employment status can be amicably terminated at any time. However, on the grounds of preservation of evidence, this should occur in writing. An amicable termination of employment status with a pregnant woman or apprentice has to occur in writing.