



SHEPHERD+ WEDDERBURN

EUROPEAN EMPLOYMENT LAW UPDATE

2017 Edition

INTRODUCTION

An organisation's workforce is one of its most important assets. However, for organisations with a pan-European presence, keeping up to date with changes in legislation and best practice can seem like a never-ending task.

This is especially true in the area of employment law, where change can be fast paced. With Britain's impending exit from the European Union, and the consideration of more general questions about the EU's future direction, more changes are expected in the coming years.

We have collaborated with a number of leading law firms across Europe to create this guide to European labour law changes. In it, we summarise recent amendments to labour laws across Europe and highlight the key reforms being introduced in 2017.

In a number of jurisdictions, a similar theme of changing employment legislation can be seen, as many countries have implemented recent EU Directives such as the directive on seconding employees abroad. Many countries have looked to increase protections for whistleblowers, update parental leave provisions, and make new attempts to help employees better balance their private and professional lives. The Guide also outlines key reforms in some of the traditional areas of employment law including increases to the minimum wage in several jurisdictions, and updates to the law on unfair and collective dismissal.

Contact details for all of the contributor firms are provided within the Guide, so please do get in touch if you have any questions.

This brochure contains a summary of general principles of law. It is not a substitute for specific legal advice, which should be sought in relation to any application of the subject matter of this brochure.



AUSTRIA



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D O R D A

Employees posted to Austria entitled to comparable wages

The new Act against the Dumping of Wage and Social Services (Lohn-und Sozialdumping-Bekämpfungsgesetz, LSD-BG) replaces the old regulations contained in the Employment Law Harmonisation Act with effect as of 1 January 2017.

The LSD-BG aims to ensure compliance with minimum standards of employment for both domestic employment, cross-border employee leasing, and posting of employees. 'Posting' describes the situation where one or more workers, for a limited period, carry out their work in the territory of a state different than the one in which they normally work. Posting differs from employee leasing (leasing describes the situation where an employee is integrated into an Austrian undertaking and is subject to its functional supervision and instructions).

There are several exemptions from the LSD-BG, namely short-term postings for various purposes such as:

- Business meetings.
- Seminars.
- Trade fairs and similar events.
- Conferences.

The exemptions apply in these situations as long as no further services may be provided by the posted employees.

According to the LSD-BG, employees who usually conduct their work in Austria but are employed with a foreign entity that is not subject to an Austrian collective bargaining agreement will still be entitled to the same minimum wage as comparable employees of comparable Austrian businesses. Similarly, foreign employees who are posted to Austria are entitled to the same minimum wage as Austrian employees of Austrian businesses for the entire duration of the posting.

The employer will need to notify Austrian public authorities of the posting in advance. Additionally, certain documents, such as the employment agreement, payslips, and records of working time will need to be available at the place of work.

There are substantial civil penalties for employers who fail to meet the requirements of the LSD-BG regime.

Parental part-time

According to the Maternity Protection Act (Mutterschutzgesetz, MSchG) as well as the Paternity Leave Act (Väter-Karenzgesetz, VKG), parents are entitled to work part-time until the child's seventh birthday or until the child starts school, if the employee has been employed for at least three years and the business unit employs more than 20 employees. The purpose of this system is to reconcile family and working life for both parents.

The MSchG and the VKG were amended by several provisions related to parental part-time work. Most importantly, where parents request to work part-time, their working time must be reduced by at least 20%, but this is subject to a minimum working time of 12 hours per week. Furthermore, parents may now claim their right to parental leave at a later point in time, rather than immediately upon birth or after the partner's parental leave. Certain provisions of the MSchG concerning the prohibition on work for (expectant) mothers as well as termination protection are now applicable to freelance employees as well.

The Austrian Supreme Court also came to a significant decision pertaining to lump sum overtime arrangements, holding that the entitlement of employees to an agreed overtime lump sum is to be suspended during the period of parental part-time employment.



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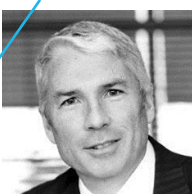
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