

Austria – Anti-Wage and Social Dumping Act as of 1st of January 2017

As of 1st of January 2017 any cross-border posting and hiring out of employees shall be subject to the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz LSD-BG).

For the following transactions, freight operators established outside Austria are required to electronically submit a Notification of an Employee Secondment to Austria for mobile employees or crew members before crossing the border, irrespective of whether or not an Austrian enterprise is economically involved.

- 1) All originating and terminating traffic from or to Austria
- 2) All cabotage journeys between places within Austria (a relaxation of the existing regulation as the 5-day period is abolished.)
- 3) All transit journeys if the usual place of work is Austria, i.e. if the beginning and end of the transit are in immediate proximity to the Austrian federal border (also without participation of Austrian enterprises.)

The duties of notification apply to freight operators established outside Austria and the notification refers to the posted employees.

An employee having his/her usual place of work in Austria, whose employer is established in a country other than Austria, shall be entitled to the payment of remuneration, the annual leave, compliance with Austrian regulations relating to working time and rest periods that a law, an ordinance or a collective agreement in Austria define.

The *Vienna Regional Health Insurance Fund* (Wiener Gebietskrankenkasse) is nominated as the competence centre for the Anti-Wage and Social Dumping Act.

Section 4 of the LSD-BG regulates the formal requirements in case of cross-border work performance (§ 19 to § 24).

- Notification of an Employee Secondment to Austria / Notification of hiring out employees
- Social Security Document A1 or E101 (issued by the competent Social Security Institution of another country – if not available, proof of the application for the document A1/E101 plus document of the Social Security Institution confirming that the employee will be subject to the foreign Social Security throughout the period of posting – in German)
- wage payment records

- official work permit of the posted employees in the country where the employer is established, if such document is required.

The required documents have to be provided in German, the employment contract is also accepted in English. For mobile employees in the transport sector, the documents required by LSD-BG have to be ready in the vehicle when entering the federal territory of Austria or have to be made electronically available.

Up to now, the form ZKO 3 has been used for Notification of an Employee Secondment to Austria. The form ZKO 4 is filled in for notification of hiring out of employees to Austria.

For mobile employees, a 3-month notification can be submitted, i.e. it is not necessary to separately notify each individual border crossing within a period of three months. The form for the 3-month notification is not yet available.

In the event of repeated infringements of the requirements of notification and availability, if proof of wage payment is not available or in case of underpayment, it is possible that, apart from administrative penalties, the employer will be prohibited from further providing services in Austria for at least 1 year up to a maximum of 5 years.

The information presented is not legally binding and does not take into consideration the ordinance and the forms not yet available.

For further information go to:

http://www.postingofworkers.at/cms/Z04/Z04_10/home
http://www.entsendeplattform.at/cms/Z04/Z04_0/home

<http://dienstgeber.wgkk.at/portal27/wgkkdgportal/content/contentWindow?contentid=10007.724482&action=2>

<https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeacc34a476f8d&pn=B721d3a1bda1e4750953b05caa085a925&lang=en>
<https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeacc34a476f8d&pn=B721d3a1bda1e4750953b05caa085a925>

Enclosures:

Anti-Wage and Social Dumping Act

Explanatory notes