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Human Resource Services news

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Content

News

The 2015 labour law package - Important reforms in 2016 labour law

With the 2015 Labour Law Amendment Law, some fundamental reforms in labour law have entered into force, effective from 1.1.2016. Important goals behind this law were the increase in the mobility of employees, the increase in transparency in the remuneration of employees and the extension of travelling time regulations for employees. In addition, there are further adjustments in the Maternity and Paternity Leave Act with the goal of improved reconcilability of job and family.

We have briefly outlined the most important new regulations in the following:

1. Extended transparency rules with regard to the agreed remuneration

The following applies from 1.1.2016 for all new salary agreements: The basic salary (the basic wage) and the other remuneration components and their due date are to be explicitly indicated on the wage slip; a mere reference to regulations in collective bargaining agreements is no longer sufficient. If, however, the salary (wage) is increased pursuant to the collective bargaining agreement, no separate notification is necessary; the same applies for increases depending on years of service.

The new transparency regulations also apply for all-in agreements. For all all-in agreements that are newly concluded from 1.1.2016, a naming of the amount of the basic salary (wage) is mandatory as is the exact description of all remuneration components that are to be covered by the all-in. The goal of the new regulation is clear: it is to be made possible for the employee to clearly calculate the number of overtime and additional hours and also other flat-rate allowances and supplements.

The penalties if the new regulation is not complied with are laden with conflict: if the employment contract or the wage slip contains the remuneration merely as an overall total, the employee has a mandatory entitlement to the basic salary including the overpayments typical in the sector and locally. This basic salary then serves as a basis for the cover check.

On the part of the employer representatives, there are already published opinions that it should be acceptable to recognise the basic salary on the basis of the classification pursuant to the collective bargaining agreement. In our opinion, a depiction of the "actual basic salary/wage" locally and usual in the sector should at least be considered. A mere depiction of the minimum salary pursuant to the collective bargaining agreement in sectors/companies who regularly do not pay out the minimum salary pursuant to the collective bargaining agreement for normal working hours harbours the risk in the long term that it will not stand up to a legal dispute.

2. Changed working time bandwidth with parental leave

For working time reductions in the case of parental part-time for children who are born, adopted or fostered free of charge on 1.1.2016 or later, a new regulation is that the parental part-time must be within a certain bandwidth:

→ Minimum working hours of twelve hours per week

→ The working time reduction must be at least 20% of the weekly normal working hours.

Example: With a normal weekly working time of 40 hours, the working time must be reduced by at least eight hours so that the parental part-time is a maximum of 32 hours. Minimal reductions/changes in the working time with the mere goal of entering protected parental part-time are now no longer possible. Abuse in practice has thus been checked.

3. More difficult non-competition clause

A **non-competition clause** is an agreement by means of which the employee is restricted in his/her employment for the time **after the employment contract has ended**. The employment restrictions can relate, e.g. to a certain industry, to certain companies, to a certain type of employment or from a local perspective to a certain area.

With the 2015 Labour Law Amendment Law, the possibility of agreement of a non-competition clause was restricted further. For **conclusions of new** contracts **from 29.12.2015** onwards, the remuneration threshold has been lifted to **20 times** (formerly 17 times) the **daily basis for the maximum amount pursuant to the General Social Security Act (ASVG)**. This means that the salary in the last month of the employment contract may not fall below the remuneration threshold of **Euro 3,240.00**. If the amount falls below this threshold, an agreed non-competition clause is non-enforceable.

However, it should be noted that for employees whose salary falls below this remuneration threshold at the time when they are hired but who reach the remuneration threshold in the course of the employment contract, **a non-competition clause can nevertheless be validly agreed**.

Practical tip: The remuneration can increase over a lengthy period of employment. The **subsequent agreement of a non-competition clause** is often difficult and is only possible by mutual agreement. It is therefore recommended that a non-competition clause be agreed also with employees whose salary is still below the relevant remuneration threshold at the start of the contract. The decisive factor for the validity of the non-competition clause is that the remuneration exceeds the aforementioned remuneration threshold **at the end of the contract**.

The level of contractual penalties in the event of a breach against the non-competition clause is now limited to **six net monthly salaries (without special payments)**. If a contractual penalty has been agreed, claims to compensation that goes beyond this is excluded.

Practical tip: Six net monthly salaries are a **maximum threshold** and it is not recommended in every case that this is agreed. For a contractual penalty in this amount can also be viewed as inappropriate in the event of dispute and can be reduced by the court.

4. New regulations with reimbursement of training costs

As a fundamental rule, the employer can demand the costs for certain training courses back from the employee when the employment contract ends (among others, it must be possible for the employee to use the knowledge imparted on the labour market, i.e. no company-specific training). One of the requirements is a written agreement that must also meet **certain requirements with regard to content**.

There were important reforms in the course of the 2015 Labour Law Amendment Law.

1. The maximum permissible duration of the repayment period has been **reduced** from five to **four years**. In exceptional cases (with very cost-intensive training e.g. professional pilot), however, a maximum duration of eight years continues to be permissible.

2. A **monthly** pro-rata allocation of the training amount to be repaid must be agreed as a **mandatory** measure. Consequently, an annual pro-rated allocation of the reimbursement of the training costs frequently agreed up to now is thus no longer permissible.

If the new provisions are not complied with, there is the risk that the repayment agreement will become invalid in its entirety.

Already existing training costs reimbursement agreements remain unaffected by the new regulation.

Practical tip: In practice, it is often overlooked that a special reimbursement agreement is to be reached with the employee for each **course of** training. It is therefore not sufficient to just include a general reimbursement obligation in the employment contract.

5. Extended maximum working time with active travelling times

Since 1.1.2016, the daily maximum number of working hours can also be extended by so-called active travelling times up to a maximum of twelve hours. An active (business) trip exists if work is performed during the travelling through the ordered steering of a vehicle. This regulation aims in particular to facilitate the return to the place of work or residence on the same day as the work performed away from the workplace/home.

Example: An employee is commissioned with undertaking a business trip and uses a car for the travel. The outward journey takes 4 hours, as does the return journey ("active travelling time" = working time). The fulfilment of the task also takes 4 hours ("working time"). After the total amount of active travelling times and working times meets the maximum working time of 12 hours, this business trip corresponds to the provisions of the Working Hours Act (AZG) from the perspective of working time law.

If it is not possible to complete the task including active travelling times in the specified maximum working time of 12 hours, the employee must be offered e.g. the possibility of overnight accommodation as otherwise the regulations under working time law are not complied with.

Please note that this regulation only covers employees for whom the driving of a vehicle is not deemed to be the main activity.

International matters

German minimum wage also for Austrian expats?

Fines up to EUR 500,000 possible

As of 1.1.2015, Germany introduced a minimum wage law for all employees who are employed on German federal territory. Employees with an Austrian employment contract who are temporarily assigned to Germany are thus also entitled to the German minimum wage. The German minimum wage is 8.50 EUR/hour. When a 40-hour week is assumed, this results in a minimum gross monthly salary of EUR 1,473.33.

For some sectors and regions, however, there are lower hourly rates for defined periods of time.

According to information from our German colleagues there are numerous pitfalls in the assessment of which salary components are seen as minimum salary (e.g. in connection with the 13th/14th salary and with assignment-related allowances).

If there are breaches of the regulations of the minimum wage law, fines of up to EUR 500,000 may be imposed and the company excluded from the award of public contracts.

Voluntary continued insurance in domestic pension schemes can (once again) be taken out in addition to foreign mandatory insurance starting in 2016

The principle of single insurance within the regulation (EC) 883/2004 or a bilateral agreement does not provide for insurance in two pension systems. Therefore, until recently it was impossible that someone is covered in the Austrian pension system if a mandatory insurance existed in another EU/EEA country, Switzerland, or another contracting member state.

However, multiple insurance is possible under certain conditions if the state in question explicitly or tacitly allows a concurrence of this type.

The new regulation in the Social Law Amendment Act (from 28.12.2015, effective from 1.1.2016) introduced the possibility for multiple insurance under Austrian law as long as an appropriately close relationship with the Austrian pension system exists.

In any case, domestic voluntary insurance months must not be added to foreign mandatory insurance months, which were collected for the same period, in order to gain pension rights. This being said, it should be considered whether voluntary continued insurance is economically reasonable if a mandatory insurance already exists in another contracting member state.

The evaluation of the issue's feasibility depends on whether the continued insurance contributions are tax-deductible (in Austria or abroad), as well as on the extent of the difference between the Austrian and foreign pension levels.

This new possibility is open to all insured parties who have acquired 12 months of mandatory insurance in the Austrian pension scheme due to gainful employment immediately before the continued insurance.

Payroll accounting

Employee discounts to retirees

Retirees frequently receive discounts from their former employer, such as a reduced telephone tariff or the purchase of certain products at reduced prices. In this context, the question arises as to what fiscal consequences such benefits that are granted beyond the end of the employment contract have - both for the employee and for the former employer.

It is to be stated in advance that the tax exemption introduced from 2016 onwards within the framework of the tax reform applies for employee discounts only in the case of employees. Not, however, in the case of retirees because retirees are not employees.

This means, however, that discounts granted by the former employer to retirees that usually exceed price discounts granted to consumers fundamentally constitute a fiscally relevant benefit from the (former) employment contract (income from employment pursuant to Section 25 of the Income Tax Act (EStG).

The consequence of this firstly for the employer is that the discount granted is fundamentally subject to income tax as a benefit in kind. For recording by means of the tax assessment, an annual wage slip is thus to be sent to the tax office, even if – and this will also usually be the case – no income tax has been incurred for the discount received.

Secondly, the retirees receives two forms of income subject to income tax (pension and the granting of a discount) and is therefore to be assessed in any case by the tax office with regard to income tax (mandatory assessment).[1] Within the framework of this, there may be a corresponding subsequent payment if the discount granted by the employee is taxed as a benefit in kind together with the pension payment.

And something else also has to be noted from the retiree's perspective.

Retirees who do not receive a statutory old-age pension may – as additional earnings alongside their pension – engage in marginal employment. If such a retiree engages in such ancillary employment and if he or she also receives a discount subject to tax from his/her former employee, there will be a loss of the pension payments if the threshold of marginal employment is exceeded. That is why caution is required when granting such discounts if the employee also engages in ancillary employment.

[1] In contrast, several pensions or payments from earlier employment contracts are not to be assessed if they are subject to joint deduction of income tax at a paying office.

Good to know…

Important interest rates from 2016

Important interest rates from 16.03.2016:

Interest	Legal basis	%
Interest for outstanding salaries ("Zinsen für Forderungen aus Dienst-verhältnissen")	Section 49a of the Labour and Social Court Law (ASGG)	8.58
Social Security arrears interest ("SV-Verzugszinsen")	Section 59 par. 1 of the General Social Security Act (ASVG)	7.88
Interest for tax deferral ("Stundungszinsen für Abgabenschuldigkeiten")	Section 212 par. 2 of the Federal Tax Code (BAO)	3.88
Interest for tax deferral ("Aussetzungszinsen")	Section 212a par. 9 of the Federal Tax Code (BAO)	1.38
Interest for tax deferral ("Anspruchszinsen")	Section 205 par. 2 of the Federal Tax Code (BAO)	1.38
Interest for tax deferral ("Beschwerdezinsen")	Section 205a par. 4 of the Federal Tax Code (BAO)	1.38

Our 2016 TaxInformation for you

Our know-how to plan your employee assignments
2016 TaxInformation

Does your company regularly send employees on international assignments or does it employ foreign staff in Austria?

The following questions frequently arise here:

- With which countries are there double taxation agreements (DTAs)?
- How are the 183 days counted according to the individual DTAs?
- Is the credit or exemption method applicable?
- What is the deadline for establishing construction/installation premises?
- With which countries is there a social insurance agreement?

In addition, foreign employees will approach you with the following questions:

- How much tax do I pay in Austria?
- What is tax-deductible?
- How high are the social insurance contributions?
- How high is family allowance in Austria?

So that you are well prepared for these questions, we have compiled the key facts for you in our brochure "TaxInformation Austria 2016". You will find the brochure under the following link: ***2016 TaxInformation***

We will be pleased to assist you if you have any questions on the topic of assignments. Give us a call or send us an e-mail.

We are here for you!

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Editorial board
Have you got any questions, remarks or comments about the newsletter? Our contact person on the editorial board will be pleased to hear from you!

We look forward to your feedback.

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