

# VO 330.226 Wirtschaftsrecht

Hon-Prof Dr Walter Brugger

Dorda Brugger Jordis Attorneys at Law  
walter.brugger@dbj.at

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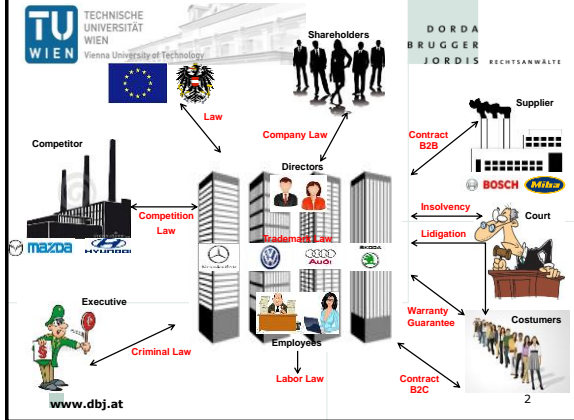
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## Labour Law

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**What is Labour Law?**

- Labour Law is the special private law for employed persons that protects them from the typical supremacy of the employer.
- Individual Labour Law: regulates legal relationship between employee and employer.
- Collective Labour Law: regulates relationship between groups of employers and employees (including Collective and Works Agreements)

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Individualarbeitsrecht und Kollektivarbeitsrecht




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**Most important sources of Labour Law**

- Labour Constitution Act (Arbeitsverfassungsgesetz, ArbVG)
- Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB)
- Salaried Employees Act (Angestelltengesetz, AngG)
- Trade Regulations (Gewerbeordnung, GewO)
- Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG
- Dienstnehmerhaftpflichtgesetz, DHG
- Entgeltfortzahlungsgesetz, EFZG
- Insolvenz-Entgeltsicherungsgesetz, IESG
- Urlaubsgesetz, UrlG; Arbeitszeitgesetz, AZG
- Maternity Protection Act (Mutterschutzgesetz, MSchG)

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**Employment Contract**

- No formal requirements
- Continuing obligation
- For a fixed term or an indefinite period
- No violation of legal prohibitions or morality

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**Employment Contract - Obligations**

- Employee: personal provision of services in personal dependence (especially subject to directives of employer, integration in business structure), duty of allegiance
- Employer: normally, not necessary, payment of salary; duty to safeguard staff

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**Differentiation to other contracts**

- Freelance contract: no personal dependence
- Contract for services: contractor owes production of an achievement, not only effort
- Authorisation contract: legal transactions, no factual acts

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### Differentiation to other contracts

**Echter Dienstnehmer:**

- persönliche Abhängigkeit
- Einordnung in betriebliche Abläufe (Arbeitszeit, -ort, -abfolge)
- Weisungsbefugnis des Arbeitgebers
- wirtschaftliche Abhängigkeit, (Lohnabhängigkeit, kein Eigentum an Produktionsmitteln)

**Freier Dienstnehmer:**

- Nicht persönliche (nur wirtschaftliche) Abhängigkeit
- Kein Angestelltengesetz, Kollektivvertrag, Urlaubsgesetz,, Arbeitsverfassungsgesetz, Insolvenzrentgeltversicherungsgesetz
- aber ASVG und Mitarbeitervorsorgekasse ("Abfertigung neu")

**Werkvertrag:**

- Herstellung eines Werkes gegen Entgelt; geschuldet wird konkrete Leistung und bestimmter Erfolg.
- Persönliche und wirtschaftliche Unabhängigkeit: eigene Dienstnehmer und/oder der überwiegend Einsatz eigener Betriebsmittel

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### Manual worker vs Non-manual worker

- Non-manual worker ("Angestellter"): employees who do commercial, higher non-commercial or secretarial work ("white collar")

- Manual worker ("Arbeiter"): employees who do not do commercial, higher non-commercial or secretarial work ("blue collar"). Weekly pay; termination period




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### Remuneration

- Employee is entitled to demand remuneration when he is able and ready to work (even if he/she could not do his/her work because of reasons which are attributable to the sphere of the employer)
- Employee is not entitled to demand remuneration when he/she refuses to work (eg participation in a strike)

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### Continued remuneration in case of sickness

- Unfitness for work (health reasons)
- Employees are entitled to their full remuneration for 6 weeks
- Employees are entitled to half of their remuneration for 4 more weeks (+ remuneration "sickness benefit" by social insurance)
- In case of occupational accident or disease: full remuneration for 8 or 10 weeks (depending on the number of working years)
- On demand of employer: doctor's certificate

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### Continued remuneration in case of other personal problems

- Only for a relatively short time (max 1 week)
- eg: court hearing, family reasons (wedding, birth, death), impossibility to reach workplace (strike of public transport), religious event

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### Exemption because of necessary care for close relatives

- 1 week:
- Necessary care for sick close relatives who live in same household
  - Necessary care for children because of absence of person who normally looks after children
- another week:
- Necessary care for sick children under the age of 12 who live in same household

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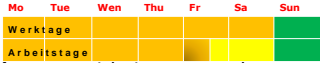
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**Holiday**

- 30 "Werktage" (= 5 weeks) a holiday year (36 working days after 25 years)



- Agreement between employee and employer when exactly employee goes on holiday; in 2 parts (5 days minimum)
- Arises after 6 months in full (before that: only aliquoted)
- Limitation (period of prescription): 2 years after end of holiday year in which the holiday had arisen

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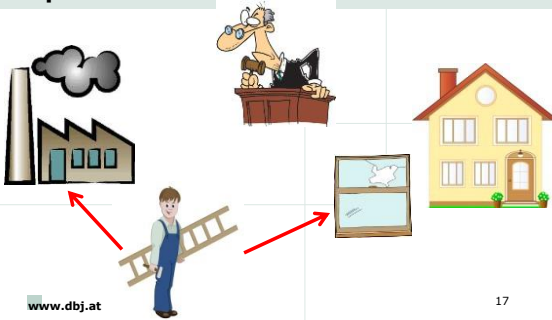
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**Compensation and Liability**




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**Working hours**

- Standard working time (max. 8 hours/day; 40/week; less if collective bargaining or individual agreement)
- Overtime up to max. 10/day, 50/week;
  - As of 1 Sept 2018: also up to 12/day; 60/week; but only "voluntarily"
- Overtime remuneration: +50% or compensatory time off
- Part-time work
- Rest period (min. 30 min/day; min 11 hours overnight)

Flexibility, details and many exceptions in AZG and collective bargaining agreements

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### Maternity Protection

- 8 weeks before and 8 weeks after childbirth
- Work prohibition: night work (20:00-06:00), Sunday and holiday, no overtime, dangerous work
- Entitlement to part-time work



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### REMEMBER regarding Contracts:

- If entered into for a fixed term:
  - Termination through the elapse of time (automatically without any notice)
  - Premature termination only with cause (i.e. important grounds that continuation is not deemed acceptable)
- If entered for an indefinite period of time:
  - Unilateral notice of termination observing a period of termination
  - Premature termination only with cause
- Mutual termination always possible

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### Termination of employment

- **Fixed-term** employment contract ends with passage of time only
  - Lifetime employment or employment for more than 5 years: employee can give 6 months notice of termination (after the expiration of 5 yrs)
  - "Probation period": max. 1 month
- Termination of contracts **for an indefinite period of time**: unilateral declaration of intent; special periods and dates that have to be met
- **Premature** dismissal/resignation with immediate effect for reasons so important that continuation of employment contract could not be expected
- (Consensual termination always possible)

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**DISTINGUISH**

<p><b>Ordinary termination (Kündigung)</b></p> <ul style="list-style-type: none"> <li>▪ Period of time for notice (Frist)</li> <li>▪ <b>Target date (Termin)</b></li> <li>▪ No cause</li> </ul>	<p><b>Premature termination for cause, immediate dismissal (Entlassung od Austritt)</b></p> <ul style="list-style-type: none"> <li>▪ No time period</li> <li>▪ <b>Forthwith</b></li> <li>▪ For cause</li> </ul>
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**Examples for important reasons (cause)**

<p><i>Employer's reasons:</i></p> <ul style="list-style-type: none"> <li>▪ Inability to work</li> <li>▪ Arrears of wages</li> <li>▪ Noncompliance with health&amp;safety and anti-harassment provisions</li> <li>▪ Offences against employee</li> </ul>	<p><i>Employee's reasons:</i></p> <ul style="list-style-type: none"> <li>▪ Disloyalty, bribability, untrustworthiness</li> <li>▪ Inability to work</li> <li>▪ Competition against employer</li> <li>▪ Insistent refusal to work</li> <li>▪ Long time absence (jail) except for illness</li> <li>▪ Offences against employer</li> </ul>
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**Notice period and finish time if notice is given by employer**

- Notice period: 6 weeks (after 2 years: 2 months, etc)
- Target date (end of employment): end of calendar quarter (only if agreed: 15<sup>th</sup> or last day of the month possible)

**Example (calculation of 6 weeks notice to end of month):**

notice -----=termi-  
 given on =6weeks nation  
 ---10 Nov---17 Nov---24 Nov---1 Dec---8 Dec---15 Dec---22 Dec---31Dec

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**Notice period and finish time if notice is given by employee**

- Notice period: 1 month (only if agreed: up to max. half year, but never longer than the period for termination by employer)
- Ending on the last day of the month

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**Dismissal Protection**

- Only in businesses with more than 5 employees
- Preliminary proceedings (works council)
- Challenge against unlawful or unfair dismissal – employer can justify termination of contract under specific circumstances
- Special dismissal protection for works council members, civil or military servants, disabled persons

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**Dismissal Protection**

- Employer shall notify works council before a dismissal which otherwise is void.
- Works council may consent, disagree within a week or remain silent. After this week the employee (or the works council if he has dissented) may contest the dismissal before the labour court within 1 week (if there is no works council: 1 week upon receipt of the notice).
- Grounds for objection – court can annul the termination:
  - Motivkündigung (zB Gewerkschaftszugehörigkeit)
  - Sozialwidrigkeit (außer es gibt persönliche oder wirtschaftliche = betriebliche Kündigungsgründe; Sozialwidrigkeit entfällt auch dann, wenn der Betriebsrat der Kündigung nicht widersprochen hat)

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**Dismissal Protection**

- Special dismissal protection (works council member, pregnant employees up to 4 months after delivery, civil or military servants, disabled persons)
- Preliminary approval by labour court required

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**No Protection for managers ("leitende Angestellte")**

- Working time limits and obligatory breaks at work (Arbeitszeitgesetz, Arbeitsruhegesetz) do not apply
- No voting right for works council
- No dismissal protection

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**Claims after Termination**

- Holiday compensation
- Severance payment (system "new"=Staff Provision Fund; "old")
- Occupational pension (company pension) and Stock options if any
- Written recommendation (reference letter)

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### Insolvency of employer

- Possibility of extraordinary termination by insolvency administrator
- Insurance against non-payment in case of insolvency
- Only salary 6 months prior to insolvency proceedings

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### Taxes etc – white-collar workers

- Payroll tax (Income tax law)
  - Progressive rate 0% to 55% (extraordinary payments: 6% flat)
- Social security contribution (+ rate payable by employer)
  - Maximum computation base EUR 5.130,- p.m. [as of 2018]
  - Health insurance contribution 3.78% (+3.87%)
  - Accident insurance contribution 0% (1.4%)
  - Pension ins. contribution 10,25% (+12.55%)
  - Unemployment ins. contrib. 0% bis 2%; ab 1.696,01: 3% (+3%)
  - IESG (0.35%), AK-Umlage 0.5%, MVK 1.53%
  - WF-Beitrag 0.5% (+0.5%)
  - DB FLAG [as of 2018] 3.9% + DB-Zuschlag
- Municipal rate 0% (+3%)

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### Equal Treatment (&Equal Pay)

No discrimination based on

- Sex (e.g. gender-neutral job offers, equal pay),
- race or ethnic origin,
- religion or belief (allow all or none; exceptions for religious or political institutions, exceptions for safety/sanitary reasons in hospitals),
- disability,
- age (e.g. mandatory retiring – disregarding health – with 60 yrs: *Luhmann v. Deutscher Bund*)
- sexual orientation (EU Directive 2000/78/EC of 27 November 2000, establishing a framework for equal treatment in employment and occupation)

Despite of the goal of gender equality, there is no affirmative action (cf USA) allowed (ECJ 17 Oct 1995, C-450/93 – Kalanke/Bremen/Germany). Bevorzugung bei gleicher Punktezahl ist zulässig (C-409/95 - Marshall); auch: Erleichterungen d Berufstätigkeit f Frauen zulässig (C-157/93 - E. AEUV)

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### Equal Treatment (Equal Pay)

Diskriminierungsverbot:

- EuGH 17. 10. 1995, C-450/93, *Kalanke/Bremen*:  

- OGH 24. 7. 2013, 9 Ob A 40/13t:  


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### Representatives of Employees

- Works Meeting: all employees can attend the meeting, but only those over the age of 18 are eligible to vote
- Works Council: term of office is 4 years, minimum 1 member (the more employees, the more members)
- Right to information, monitoring rights, right of consultation, power of assent or veto in specific areas

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### Works Agreement

- Concluded between employer and works council
- Law and Collective Agreements state which matters should be covered
- Legally binding
- Necessary or optional (for necessary works agreements consent of works council needed)

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**Collective Agreement**

- Concluded between interest groups of employers and employees
- Determination of a minimum level of working conditions (minimum wages)
- Legally binding
- Collision of Collective Agreements: priority of voluntary professional associations, significant economic importance

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**Main Interest Groups**

- **The Austrian Trade Union Federation**
  - Organization with voluntary membership.
  - ÖGB: 1.19 million members (≈30% of all employees)
  - The Austrian Trade Union Federation is involved in the negotiations of collective bargaining agreements.
  - Blue-collar workers are organized in unions, depending on the main business purpose of their employer's business.
  - White-collar workers are organized in two unions only: one for white-collar workers in the arts and media industry and the other for all other white collar workers.

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**Main Interest Groups**

- **Chamber of Labour**
  - Compulsory membership
  - membership fee 0.5% of gross income (max EUR 14,40 per month)
  - 3 million employees represented
  - participation in legislative process (evaluation of draft legislation, amendment proposals)

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**Thank you!**

Walter Brugger  
[walter.brugger@dbj.at](mailto:walter.brugger@dbj.at)

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