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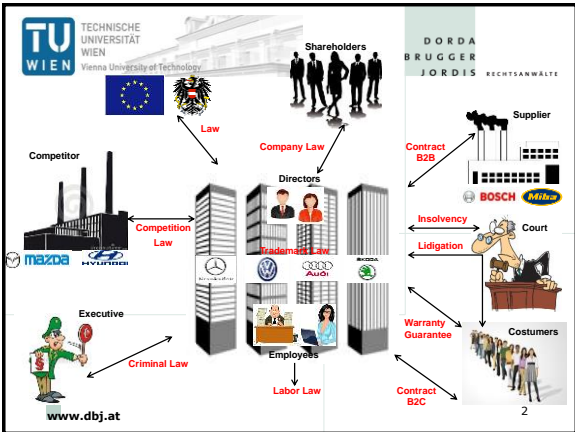
VO 330.226 Wirtschaftsrecht

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www.dbj.at 1

1



2

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Labour Law

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3

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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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4

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Individualarbeitsrecht und Kollektivarbeitsrecht

The diagram illustrates the relationship between three entities: **Employer** (represented by a person at a desk), **Betriebsrat, Belegschaftsvertreter, zB OGB** (represented by a group of people), and **Arbeitgebervertreter, zB WKO** (represented by a group of people). Red double-headed arrows connect the Employer to both the Betriebsrat and the Arbeitgebervertreter, indicating a reciprocal relationship.

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5

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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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6


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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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7


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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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8


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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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9

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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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10

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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 14 days



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11

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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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12


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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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13


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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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14


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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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15

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Holiday

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

Mo	Tue	Wen	Thu	Fr	Sa	Sun
Werktag	Werktag	Werktag	Werktag	Werktag	Werktag	Werktag
Arbeitsstag	Arbeitsstag	Arbeitsstag	Arbeitsstag	Arbeitsstag	Arbeitsstag	Arbeitsstag

- 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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16

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Compensation and Liability

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17

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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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18

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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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20

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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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21

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DISTINGUISH

<p>Ordinary termination (Kündigung)</p> <ul style="list-style-type: none"> ▪ Period of time for notice (Frist) ▪ Target date (Termin) ▪ No cause 	<p>Premature termination for cause, immediate dismissal (Entlassung od Austritt)</p> <ul style="list-style-type: none"> ▪ No time period ▪ Forthwith ▪ For cause
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22

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Examples for important reasons (cause)

<p><i>Employer's reasons:</i></p> <ul style="list-style-type: none"> ▪ Inability to work ▪ Arrears of wages ▪ Noncompliance with health&safety and anti-harassment provisions ▪ Offences against employee 	<p><i>Employee's reasons:</i></p> <ul style="list-style-type: none"> ▪ Disloyalty, bribability, untrustworthiness ▪ Inability to work ▪ Competition against employer ▪ Insistent refusal to work ▪ Long time absence (jail) except for illness ▪ Offences against employer
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23

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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: 15th or last day of the month possible)

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

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

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24


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- 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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25


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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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26


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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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27


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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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28


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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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29


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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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30

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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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31

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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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32

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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 Gewerkschaftsbund*)
- 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 (Art. 157 Abs 4 AEUV)

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33

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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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34

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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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35

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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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36


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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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37


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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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38


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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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39

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Thank you!

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