

AUSTRIA

Prepared by Bert Ortner
Fiebinger, Polak, Leon & Partner

1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

Under the Austrian Employment Act (“Angestelltengesetz”), the employer may terminate at the end of any calendar quarter by observing the statutory (or agreed longer) notice period. Notice periods depend on the position (shorter notice periods apply for some blue-collar workers) and length of employment. Notice periods range between six weeks (during the first two years of employment) and five months (after 25 years of employment). Some collective bargaining agreements contain more restrictive provisions.

In general, no grounds for termination need to be stated. Certain groups of employees may only be terminated with prior consent of the labor court. These include pregnant women, mothers on maternity leave, mothers working part-time, members of the labor council, apprentices, workers performing military service and disabled employees.

2. Are there any formal requirements for terminating an employee or groups of employees?

In general, there are no formal requirements. Certain collective bargaining agreements require that terminations be made by a written document. If a works council exists in the enterprise, the works council must be informed at least five full work days in advance (the day of such information and the day when the termination is issued shall not count) and any termination that is issued before such waiting period is void.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

Special rules exist for mass layoffs. These apply, subject to more detailed rules, if more than 5% of the workforce is terminated (including terminations by mutual agreement that are proposed by the employer) within a period of 30 days.

The employer must notify the works council and the local employment office of such envisaged terminations, and must observe a 30 days’ waiting period. Any terminations that are made during such waiting period are void.

Furthermore, in case of such mass-layoffs, the works council may request a mandatory “social plan” which provides for additional “voluntary” payments to the terminated employees. Therefore, it is advisable to avoid triggering the thresholds for mass-layoffs, if possible.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Employees can challenge their terminations based on three groups of grounds:

a) the termination was based on improper motives: E.g., if the termination is based on the employee's labor union or works council activities, upcoming military service or if the employee was terminated because he raised claims against the employer which are not clearly unjustified.

b) the termination is "socially unjustified": This ground for a challenge is employed by employees who argue that due to their old age, possible lack of skills and poor financial background, they face serious difficulties in finding a new job which would allow them to pay their expenses, and that it would be comparatively easy for the employer to keep them on the payroll.

c) the termination is discriminatory: such challenges are not very common in Austria.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

a) if the proper notice period is not observed, the employment will nevertheless end at the indicated (incorrect) date and the employee is entitled to damages (which are usually equal to the pay until the next possible effective date of termination).

b) if the formal requirements that are mentioned in item 2 are not observed, the termination is null and void.

c) if the formal requirements that are mentioned in item 3 are not observed, the termination is null and void.

d) upon a successful challenge, the termination is null and void. Certain anti-discrimination laws provide for additional payment of damages and/or fines. The amounts involved are relatively low (usually a few hundred Euros or slightly more).

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

a) All formal requirements must be diligently observed.

b) Employers should try to avoid triggering the rules for mass-layoffs if there is a works council in the enterprise which could force them to agree to a mandatory "social plan" (which would usually provide for additional "voluntary" payments). A social plan can usually be avoided by terminating less than 5% of the workforce during each 30 days' period.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

Austria has a complex labor law system. While, in general, terminations are admissible without important grounds, there are numerous exceptions and formalities, and employers should consult an employment attorney before issuing terminations.

