

THE EMPLOYMENT CONTRACT



wien.arbeiterkammer.at

THE VARIOUS RULES FOR
EMPLOYEES, FREELANCE
STAFF AND TRAINEES



WIEN

DIE KANN WAS.

THE EMPLOYMENT CONTRACT AND SIMILAR CONTRACTUAL AGREEMENTS

So-called atypical employment is becoming more and more frequent in the job market. The content and not the designation of an employment contract is the determining factor, therefore it is important to know the characteristics of each type of contract.

What is an employment contract?

If someone agrees to work for another person, an employment contract comes into force. The contract is binding for the employer and the employee, as both have rights as well as obligations. The main duty for the employer is to pay the remuneration, while for the employee it concerns the work to be carried out.

The employment contract regulates the rights and obligations of employee and employer, in so far as these rights are not set out peremptory in law or in the collective bargaining agreement (peremptory law cannot be derogated from).

The most important characteristics of an employment contract are:

- Dependency (decisional power of the employer)
- Duty to carry out the work oneself
- Continuous obligation
- Obligation to work for a certain time, irrespective of success
- Use of employer's equipment
- Economical dependency of the employee
- Incorporation in the employer's organisation

Is the completion of the Employment contract bound by any formal requirements?

No, normally the completion of an employment contract is not bound by any formal requirements. Therefore the employment contract must not necessarily be issued in writing, as a verbal contract or even „conclusive action“ is valid (the latter, for example, simply where someone

provides a service for another person and the other party accepts one's performance).

What is a written statement?

Employees do not have an entitlement to a written employment contract, therefore the right to a written statement is of special relevance.

A written statement is a written record of the significant rights and obligations arising from the employment agreement. The written statement serves as proof.

The minimum contents of a written statement is set down in law. The employer is obliged to issue a written statement according to § 2 AVRAG (Employment Contract Law Adaptation Act)

TIP:

If your Employer does not issue a written statement, request one with a letter sent by recorded delivery and set a deadline. If the Employer refuses you can take legal action through the Court for Labour and Social Affairs.

IMPORTANT:

Check that the written statement does not deviate from the verbal agreement. If the written statement contains regulations which deviate from the verbal employment contract (e.g. less pay,...), inform the employer with a letter sent by recorded delivery, requesting that this should be changed, so that the employer does not get the impression that you accept the deviations.

WARNING:

The agreement regarding a clause of non - competition and of reimbursement of training costs is allowed. Attempt to remove such agreements from the written statement and/ or never agree to such arrangements verbally.

Contract for work and services (Werkvertrag):

A contract for work and services is a contract in return for payment, in which someone (service provider) commits himself to the production of defined work for another person (customer).

Characteristics of a contract for work and services are:

- Results orientated, guaranteed outcome
- No personal duty to work
- Use of own tools
- No integration into the organization of the customer
- No personal and economic dependency

EXAMPLE:

If someone asks a tailor to make a suit, there is a contract for work and services between the customer and the tailor. Between the apprentice, who actually makes the suit and the tailor, there exists an employment contract.

Freelance service contract (“freier Dienstvertrag”):

If one undertakes work for another person and neither the characteristics of a contract of employment nor the characteristics of the contract for work and services prevail, one speaks of a freelance service contract.

Since 01.07.2004 freelance staff have the right to a written statement (§ 1164a Civil Code (ABGB)).

Characteristics of such a freelance service contract are:

- No guaranteed outcome
- No, or limited personal dependency
- No integration into the organization of the customer
- As a rule freelance staff can allow themselves to be substituted

Since 01.01.2008 freelance staff exceeding the minimum threshold (2008: € 349,01 per month, respectively € 26,80 per day) will be covered by **unemployment** insurance

From 01.01.2008 the new severance pay scheme will be applied to freelance service contracts. For self-employed workers (e.g. contract workers) there is the possibility to join the unemployment insurance scheme under certain conditions from 01.01.2009.

IMPORTANT:

Whether an employment contract or another type of contract (freelance service contract, contract for work and services...) exists, depends on which contractual characteristics predominate (personal duty to work, guaranteed outcome ...). How the contract is entitled is meaningless.

WARNING:

As a rule, regulations of labour law only apply to actual employees, and not to freelance staff, service provider...

Therefore only actual employees have, for example, a right of five or six weeks holiday per year, or sick pay.

What is work-experience, compulsory traineeship and holiday employment?

There is no employment contract for **work-experience**. With the permission of the owner, the person is allowed to get to know the company's operations and the skills involved. There is neither an obligation to work, nor an obligation to pay.

Compulsory trainees are school pupils who must be active in a company of a particular type during the school holidays, so as to meet the regulations set down in their education programme.

Holiday employment concerns school pupils and students who work during the holidays in order to earn money. As a rule they are employees (e.g. decisional power of the employer, incorporation in the employer's organisation, bound by the working hours...)



metis

Die Internetberaterin im
Arbeitsrecht

WORAUF
HABE ICH
ANSPRUCH?

NOCH FRAGEN?

DAS NEUE AK PORTAL

<http://wien.arbeiterkammer.at>



To receive our brochures and folders, please contact us via:

- Telephone: (01) 310 00 10 471
- E-Mail: bestellservice@akwien.at
- fax: (01) 501 65 3065
- Internet: <http://wien.arbeiterkammer.at/publikationen>

Item number:

Update 1/2008

Medieninhaber: Kammer für
Arbeiter und Angestellte für Wien,
Prinz Eugen Straße 20-22, 1040 Wien
Hersteller: TDS Sares,
1190 Wien, Muthgasse 68
Verlags- und Herstellort: Wien

E



wien.arbeiterkammer.at