

Information on provision of employees from EU/EEA countries and Switzerland

A number of short excerpts on provision of employees are provided below. They are provided solely for informational purposes and are not legally binding. For legal information, please contact the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection at www.entsendeplattform.at

Please note the information windows when completing the employee secondment notification (ZKO4). These provide important, helpful information for preparing notifications.

Cross-border provision of employees takes place when a provider **“provides”** employees or persons similar to employees under a service procurement contract for employment at an employer (*Beschäftiger*) operation in Austria.

Foreign employers (providers) must notify the Austrian Central Coordination Office for the Control of Illegal Employment (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung) of employees or persons similar to employees who are provided for employment in Austria **BEFORE** they start work.

Employee provision takes place:

- If the required contractual work is not performed for the employer (provider), but instead for a third party employer (*Beschäftiger*)
- The employer (*Beschäftiger*) uses the provider's employee or person similar to an employee to perform work for the employer's own operations
- The provided employee or person similar to an employee is integrated into the operations of the employer (*Beschäftiger*) for the period of provision and is subject to the employer's supervision
- Must follow the instructions of the employer (*Beschäftiger*)
- No work is produced that deviates/differs from the products/services of the domestic employer (*Beschäftiger*)
- The work is not predominantly performed using tools and materials of the foreign employer (*Arbeitgeber*).

The **true economic circumstances** and not the external appearance of the situation determines whether provision of employees takes place.

Who is required to submit a notification:

Under § 19 para. 1 of the Austrian Act to Fight Wage and Social Dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG), foreign providers/employers (*Arbeitgeber*) must notify the Austrian Central Coordination Office (Zentrale Koordinationsstelle) of the provision (employment) of employees and persons similar to employees seconded to Austria **BEFORE** they **start work**. In the case of mobile employees in the transport area (goods and passenger transport), notification must be submitted **BEFORE** entry into Austrian federal territory.

Under § 19 para. 2 LSD-BG, the BMF ZKO4 online form **must** be used to automatically submit the notification.

Separate notifications must be submitted for **each employee provision**; notification of subsequent changes must be submitted without delay.

Subsequent changes concern the following:

- Change in the deployment location(s)
- Change in the length or location of work for individual employees
- Termination of employment
- Start of employment later than the time indicated in the first notification
- When the employee provision indicated in a previous notification does not come to pass for individual employees or all of the employees indicated

Note: Form ZKO4 Change Notification must be used for subsequent notifications of employees or persons similar to employees, or for other changes/corrections. If this change notification form does not include an option for your change, please contact the Austrian Central Coordination Office (Zentrale Koordinationsstelle) by email. New notifications must be submitted for subsequent places of employment.

Note: § 19 para. 1 LSD-BG [...] An employer (*Beschäftiger*) that second an employee for work in Austria is considered the employer (*Arbeitsgeber*) for the notification requirements in this paragraph and paragraphs 2 and 3. [...]

If provision takes place outside of Austria, but within the EEA and Switzerland, i.e. no direct provision takes place to an Austrian employer (*Beschäftiger*) (e.g. provision from Germany to Germany) – the employer (*Beschäftiger*) is

responsible as the employer (Arbeitgeber) for the notification requirements and duty to keep the wage documents available for the employees provided to it. That is, the same requirements apply as in the case where an employer seconded its own employees.

What are notification documents and where they must be kept available:

Under § 21 para. 3 LSD-BG, the employer (*Beschäftiger*) must **as a rule always** keep the notification documents for provided employees available at the workplace/deployment location and must present or provide them in electronic form at the time of inspection.

In addition to the workplace/deployment location (place of employment), § 21 Abs. 2 LSD-BG provides alternative options for how the documents can be kept available.

In order to be used, these options must be indicated in the notification (ZKO4), in which case they become **exclusive and binding**. (choice of options)

If these documents are not available from the person indicated/at the indicated location, an administrative penal procedure will be initiated. Subsequent changes or dividing them among different locations is **not** permitted.

Note: *Mobile employees in the transport area (goods and/or passenger transport) must have the notification documents in the vehicle **at the time of entry** into Austrian federal territory (at the time of border crossing) or must immediately make them available electronically on-site at the time of inspection. In this case, the vehicle is the place of employment.*

Under § 21 para. 3 LSD-BG, the following notification documents are required:

- The employee provision notification (ZKO4)
 - notifications of changes (change notification)
- Documents concerning employee registration for social security A1/E101 if the employee provided is not required to apply for social security in Austria, or
- Equivalent documents **in the German language**, such as
 - Request for issue of the social security document **AND**
 - Confirmation from the competent social security institution that the employee is covered by foreign social security for the secondment period
- If required, an official work permit in the country of domicile of the employer (*Arbeitgeber*) for the employee provided (third country citizens – e.g. Chinese citizens require a work permit in Germany)

Under § 26 para. 1 LSD-BG, an employee provider who

- does not submit a notification or a notification of subsequent changes in information in accordance with § 19 para. 2 and para. 4 LSD-BG, or does not submit such notifications in timely fashion or in full, or
- intentionally submits incorrect information in the notification or change notification, or commits an administrative offence, which will be punished with a fine.

An employer (*Beschäftiger*) who (§ 26 para. 2 LSD-BG)

- does not keep or make the required documents available in accordance with § 21 para. 3 commits an administrative offence and will be punished under administrative penal law.

What are wage documents and availability of wage documents in accordance with § 22 para. 2 LSD-BG

The employer (*Beschäftiger*) must **as a rule ALWAYS** keep the wage documents available at the place of employment/deployment location for **all** of the employees or persons similar to employees indicated in the notification during the entire period of domestic employment. Even when the employment of some employees ends sooner. The provider must verifiably provide the wage documents to the employer (*Beschäftiger*).

The following are wage documents:

- Employment contract or statement of terms and conditions (*Dienstzettel*)
- Pay slips
- Proof of wage payment or bank transfer slips
- Wage records
- Work records
- Documents concerning wage classification for checking the remuneration required (collective agreement or minimum wage) under **Austrian** law for the seconded employee during the period of employment

All wage documents must be available **in the German language**, except for the employment contract, which may be presented in German or English.

Non-availability of wage documents in accordance with § 28 LSD-BG

An employee provider who

- does not verifiably provide the wage documents to the employer (*Beschäftiger*) in accordance with § 22 para. 2 LSD-BG, or
- an employer (*Beschäftiger*) who does not keep the wage documents available in accordance with § 22 para. 2 LSD-BG

commits an administrative offence, which will be punished with a fine.

Forwarding of notifications to competent authorities

The Austrian Central Coordination Office forwards employee provision notifications for Croatian and third country citizens to the foreign employee offices of Public Employment Service Austria to check the requirements for an **EU secondment confirmation/approval or work permit**. Public Employment Service Austria is solely responsible for processing and issuing such documents.

Information is available at: www.ams.at

The notification is sent to

- the competent business licensing authority
- the competent health insurance carrier
- if it concerns construction work, to the Austrian Employee Leave and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse – BUAK*).
- the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection
- the Austrian Social and Training Fund (*Sozial- und Weiterbildungsfonds*)

Instructions on how to complete the form are directly available in the browser.
Please note the information windows available in the browser.