



EMCC

European Monitoring Centre on Change

Austria: Effects of non-compliance with dismissal regulations

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Austria

Phase:

Management

Type:

Effects of non-compliance with dismissal regulations

Last modified: 29 August, 2017

Native name:	Arbeitsverfassungsgesetz (ArbVG); Angestelltengesetz (AngG); Allgemeines Bürgerliches Gesetzbuch (ABGB)
English name:	Labour Constitution Act (ArbVG); Employees Act (AngG); General Civil Code (ABGB)

Article

105 (ArbVG); 29 (AngG); 1162b (ABGB)

Description

Upon the request of employees, works council or employee representatives are entitled to apply to the court within one week after having been notified of a (collective) dismissal and objected to it (e.g. in cases were the employer did not inform the works council before dismissals, unfair dismissals on social grounds, membership in trade union etc.). Employees can also challenge the dismissal at court themselves within two weeks after having been informed, regardless of whether the works council has objected to or approved the dismissal ([§ 105 ArbVG](#)). The legal challenge of a dismissal at court on the grounds of the dismissal being 'socially unjustified' is not possible after the works council has approved the dismissal (§ 105 (6)).

If the employer dismisses a white collar worker ([§ 29 AngG](#)) without a valid reason, the worker is entitled to all wages s/he would have received up to the initially agreed end of the employment relationship or under consideration of the correct application of the notice period.

If an employer fails to provide the works council with relevant information in the case of redundancies the dismissal is legally invalid (also see legislation on '[staff information and consultation on restructuring plans](#)' and '[public authorities information and consultation on dismissals](#)').

Comments

There is no established case law, but as legal provisions are unequivocal on this subject, all known cases in the sphere of operation of the Workers' Chamber Vienna were resolved in the employees' favour without lawsuit. The employer's economic risk in case of disregard is considerable: if after court procedures lasting one year (and maybe longer, if all rights of appeal are utilised) the continuing existence of the employment relationships was stated, all wages for these employees would have to be paid retrospectively without them having worked during the course of the procedures. Most companies would have to be sold at this stage due to lack of liquidity.

Each party (employer and employee) has to bear its own costs in the event of a lawsuit, regardless of the outcome.

Cost covered by

- Employee
- Employer

Involved actors other than national government

- Works council
- Other








Involvement others

- Court

Thresholds

No, applicable in all circumstances

Sources

-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  [EMCC Legal framework for restructuring](#)
-  Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, European Commission, Brussels
-  [Arbeiterkammer Wien \(2012\), Beendigung von Arbeitsverhältnissen und Kündigungs-/Entlassungsanfechtung, Vienna](#)
-  [Arbeitsverfassungsgesetz § 105](#)
-  [Angestelltengesetz § 29](#)
-  [Allgemeines Bürgerliches Gesetzbuch § 1162b](#)

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