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Austria: Selection of employees for (collective) dismissals

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Austria

Phase:

Management

Type:

Selection of employees for (collective) dismissals

Last modified: 16 May, 2019

Native name:

Arbeitsverfassungsgesetz (ArbVG); Mutterschutzgesetz (MSchG); Väter-Karenzgesetz (VKG); Arbeitsplatzsicherungsgesetz (APSG)

English name:

Labour Constitution Act (ArbVG); Maternity Leave Act (MSchG); Parental Leave for Fathers Act (VKG); Security of Workplace Act (APSG)

Article

105 (ArbVG); 10 and 15n (MSchG); 7 (VKG); 12 (APSG)

Description

When selecting employees for (collective) dismissals, the employer has to take into consideration 'social hardship', that is the potential negative consequences for the worker compared to other workers, influenced, for example by the likely duration of unemployment, future lower income levels, the health situation of the worker or the tenure in the current firm.

Certain groups of employees benefit from special protection against dismissal: Apprentices, pregnant women, parents on parental leave, disabled workers, workers fulfilling their military service, works council members, contract officers in the public service sector and janitors with company housing.

The employer has to inform the works council about each planned dismissal. The works council has one week to comment on the proposal. Upon the request of employees, works council or employee representatives are entitled to appeal to the court within one week after having been notified of a (collective) dismissal and object to it (e.g. in cases where 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 or approved the dismissal (§105 ArbVG).

Comments

The challenge of a dismissal in cases of 'social hardship' is only possible in companies where at least 5 employees are employed constantly. If the works council has approved dismissals that qualify as socially unjustified it is not possible to appeal to the court (§105 (3), 2).

Cost covered by

Not applicable

Involved actors other than national government

Works council

Thresholds

Company size by number of employees:

5

Sources

[Arbeitsverfassungsgesetz \(ArbVG\) § 105](#)

[Arbeitsplatz-Sicherungsgesetz \(APSG\) § 12](#)

- Arbeiterkammer: Die Auflösung des Arbeitsvertrages (Wirtschafts- und Sozialstatistisches Taschenbuch 2012)
- Mutterschutzgesetz § 10
- Mutterschutzgesetz § 15n
- Väter-Karenzgesetz §7

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