

Ministry of Social Affairs

Information on the posting of transport sector workers from the EEA and Switzerland Labour law provisions

In Austria, regulations intended to combat wage and social dumping in all sectors, including the transport sector, entered into effect as of 1 May 2011 and have been in force since then.

The previously applicable legal provisions were modified only slightly as of 1 January 2017. Those are laid down in the amendment to the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*) published in Federal Law Gazette I no. 44/2016.

This information refers to the posting **of employees** to Austria for the purpose of providing transport services. It does not cover temporary agency work (i.e. hiring out workers to third parties). Whether or not an individual is an employee is determined according to Austrian law.

This information refers equally to the carriage of goods and passengers. It is intended to supplement the general information provided under www.entsendeplattform.at.

Definition of posting – what types of work arrangements are involved?

Posting of workers to Austria presupposes that the employee's **customary place of work is outside Austria**. It is immaterial whether any Austrian-based client exists; a case of posting may exist even without a client in Austria.

Cases of the **posting of workers** as defined in the *LSD-BG* exist particularly under the following work arrangements:

- Cabotage (where goods are loaded and unloaded in Austria)
- Traffic terminating in Austria (goods are loaded outside Austria and unloaded in Austria), even for a client based outside Austria
- Traffic by non-Austrian companies which originates in Austria (goods are loaded in Austria and unloaded outside Austria), even for a client based outside Austria
- The items above also apply by analogy to the carriage of passengers (occasional service, regular service, also tourist trips in general which have their destination in Austria)

Even irregular or one-time transports qualify as cases of posting.

Examples of cases of posting:

- Transport of skiers to Austria
- A tourist trip through Austria that begins and ends in country A (i.e. circular tour of Austria).

No **posting of workers** as defined in the *LSD-BG* exists particularly in these cases:

- **Transit traffic** for the carriage of goods or persons (goods are not loaded or unloaded and passengers do not embark or disembark in Austria; in addition, traffic is not for the purpose of transporting goods or persons to Austria, rather the trip through Austria is necessary in order to reach the actual destination).
- The **vendor/lessor/producer/processor/owner** has delivered the goods, which have been sold/hired-out/produced or are to be processed, directly to Austria by the company's workers using the company's own (hired/leased) vehicles, where the carriage of goods is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.
- The **buyer/lessee/processor/owner** has collected the goods, which have been bought/hired/processed or are to be processed, directly in Austria by the company's workers using the company's own (hired/leased) vehicles, where the carriage of goods is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.
- As part of transporting the company's own goods (own employees) between **places of business of one and the same company**, the goods (or employees) are delivered to or collected in Austria by the company's own employees, where the carriage of goods (or persons) is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.
- Tourist trips (passenger transport) with destinations within Austria provided that:
 - the trip involves destinations that are outside Austria as well as outside the country in which the trip originates;
 - and no persons join or leave the trip in Austria.

Example of a case not involving posting:

A tourist trip through Austria that begins in country A and ends in country B.

What obligations apply?

- Compliance with the Austrian minimum wage as stipulated in the collective agreement
- Notification of posting (form [ZKO 3](#))
- Keeping these documents readily available – normally in the vehicle:

- Notification
- Documents showing social insurance registration
- Pay documents
- Employment permit for employees with third-country citizenship

Compliance with the Austrian minimum wage as stipulated in the collective agreement:

- Workers in the **road haulage sector** (i.e. the carriage of goods using motorised vehicles) fall under the [collective agreement for the road haulage sector](#). With workers employed by companies that are active in the carriage of goods using only vehicles with a maximum permitted total weight of not more than 3,500 kilograms, the [collective agreement for the transport trade for small loads](#) needs to be observed.
- In the **passenger transport sector**, the [collective agreement for private bus companies](#) has to be observed. In the case of taxi companies, workers fall under the [collective agreement for passenger vehicle transport](#).

Where a company does not belong to either the passenger transport or road haulage sector but is **additionally active in transport as part of business activities in another sector**, company workers fall under the collective agreement applying to that sector. It should be noted, however, that certain types of transport occurring in business activities are not considered to involve the posting of workers (refer to the section entitled “Definition of posting”). All collective agreements can be viewed at www.kollektivvertrag.at.

The minimum wage defined in the collective agreement applies to the entire working time. For drivers working in the carriage of goods or passengers, working time comprises driving time, the time for performing other tasks (such as loading and unloading) and times of readiness to work when drivers excluding breaks (for instance wait times while others load or unload goods).

Unladen journeys within Austria are also usually considered as working time that is subject to notification under the posting of workers scheme and for which the driver must be paid the wages stipulated in the **Austrian collective agreement**; examples include journeys back to the border after unloading in the case of terminating traffic and journeys to the loading point in the case of originating traffic, also in the case of cabotage).

Unladen transit journeys through Austria are **not** considered as working time that would be subject to notification under the posting of workers scheme and required to be paid in accordance with the Austrian collective agreement. When a transit journey is **interrupted or terminated** for the purpose of cabotage transports or to transport goods from Austria to another country, however, such carriage is indeed considered **working time that is subject to notification** under the posting of workers scheme and must be remunerated in

accordance with the Austrian collective agreement. When a driver continues transit to leave Austrian territory after completing cabotage operations, this is not considered posting of a worker subject to notification.

Notification requirements:

Generally speaking, notice has to be given of every individual case of posting for the purpose of providing transport services in Austria (standard notification). In **some cases**, however, **framework notification** or **collective notification** can be given (see below).

Notification has to be made **before starting work** (irrespective of whether standard notification, framework notification or collective notification is made).

With originating traffic and terminating traffic, drivers are considered to start working when they enter Austrian territory. In the case of cabotage operations, it is sufficient to provide notification before actually starting work (i.e. before driving to the loading point).

When carrying passengers, drivers are considered to start working when they enter Austrian territory.

Until a separate form is made available for the transport sector, the general form for all sectors is to be used, i.e. [ZKO 3](#).

Data stored from previously submitted notifications can be imported for new notifications. This can appreciably reduce the effort for completing the notification form.

Standard notification:

Where it is not possible to submit framework notification or collective notification (or where no use is made of these options although permitted), standard notification is to be submitted, i.e. **using form [ZKO 3](#)**.

These special items need to be considered when completing the form:

- Normally the worker (driver) should be entered under Section 3 "Contact person". A chartered accountant, lawyer or notary public who is established in Austria and authorised by the employer can also be entered.
- The client (i.e. party commissioning the work), regardless of whether established in Austria or in another country, should be entered under Section 4 "(Domestic) principal".

Example: In the case of an organised circular tour of Austria commissioned by a tour operator or school, the operator or school should be entered as the client/principal.

- Where, in providing occasional passenger service, the service contract is concluded by the employee (driver) providing the service, the driver's company should designate itself as the client/principal. The same applies when the company does not make any special administrative arrangements prior to the transport and a client/principal cannot be designated or only with disproportionate effort.
- Where the transport company provides services under contract to more than one client, separate notification is to be made for each client/principal (see below for the special case of collective notification).
- Under Section 6 "Location (full address) of the employment in Austria", the word "Vehicle" should be entered in the "Address" field. "Austria" is to be entered in the "City" box.
- The required documents are usually to be kept available in the vehicle. "At the place of employment" is to be correspondingly checked under Section 7 "Disclosure of mandatory availability of notification documents and wage documents".
- Only pay documents and records of hours worked can also be kept available at an Austrian branch, parent company or subsidiary belonging to the same company group (see section entitled "Keeping documents available"). In such cases the corresponding box should be checked under Section 7.
- With transport services, the period to be given under Section 8.11 and 8.12 will normally be the same as that given under Section 5.
- The normal hours that the employee usually works (i.e. including outside Austria) are to be entered under Section 8.13 "Duration and scheduling of the agreed normal working hours". The fact that the employee's working hours in Austria may vary is of no consequence.

Framework notification (for a period not exceeding three months):

Where the transport company anticipates **working repeatedly for a certain client**, notification can be made for a period of up to three months. Where the transport company provides services **under contract** repeatedly **to more than one client**, **separate framework notification** is to be made **for each client/principal**. Individual cases of posting do not have to be notified individually. This is the advantage of framework notification. **Repeated framework notifications are permitted**. Framework notification is also possible for **regular passenger service**.

Until a separate form is made available for framework notification, the **general form** is to be used, i.e. [ZKO 3](#). These special items need to be considered when completing the form:

- Normally one of the employees (driver) can be entered under Section 3 "Contact person". A chartered accountant, lawyer or notary public who is established in Austria and authorised by the employer can also be entered.

- The client (i.e. party commissioning the work), regardless of whether established in Austria or in another country, should be entered under Section 4 “(Domestic) principal”.
- Where the transport company provides services under contract repeatedly to more than one client, separate framework notification is to be made for each client/principal.
- In the case of regular passenger service, the authority licensing the carrier is to be entered as the client/principal. Where the passenger carrier provides services under contract to another company, the latter should be entered as the client/principal.
- A period not exceeding three months is to be entered under Section 5 “Total period of secondment to Austria”.
- Under Section 6 “Location (full address) of the employment in Austria”, the phrase “The vehicle” should be entered in the “Address” field. “Austria” is to be entered in the “City” box.

For regular passenger service, every (scheduled) stop at which passengers embark and disembark and the route driven should be listed. It suffices in this case to include these details in a PDF document submitted with the notification (while entering under Section 6 only one stop for embarking or disembarking to ensure that the mandatory field is completed).

- The required documents are usually to be kept available in the vehicle. “At the place of employment” is to be correspondingly checked under Section 7 “Disclosure of mandatory availability of notification documents and wage documents”.
- Only pay documents and records of hours worked can also be kept available at an Austrian branch, parent company or subsidiary belonging to the same company group (see section entitled “Keeping documents available”). In such cases the corresponding box should be checked under Section 7.
- All workers that the employer expects to deploy are to be entered under Section 8 “Employee seconded to Austria”; this is to be done even for employees expected to be deployed as of a date after the beginning of the maximum three-month period. Employers wishing to post additional workers at a later date during the period indicated under Section 5 have to provide later notification using the separate form designated for that purpose. That form is available on the website of the [Central Co-Ordinating Agency](#) (ZKO) in the Federal Ministry of Finance.
- The period indicated under Section 5 is also to be entered under Section 8.11 and 8.12. When providing later notification of additional workers, the date of later notification should be entered under Section 8.11.
- The normal hours that the employee usually works (i.e. including outside Austria) are to be entered under Section 8.13 “Duration and scheduling of the agreed normal working hours”. The fact that the employee’s working hours in Austria may vary is of no consequence.

- The German term “Rahmenmeldung” should be entered at the end of the form in the “Notes” field for the entire form.

Collective notification (for different clients):

It is possible to submit collective notification:

- if jobs that are contracted under **at least two clients** are to be completed in Austria at **closely related times and locations**;
- and those contracts are **already known** as of the date of notification.

The term “**closely related locations**” can include the entire territory of Austria as long as workers do not leave the country during the jobs. Workers can briefly leave Austria where expedient for travel, however, to remain within the vicinity of those locations (e.g. briefly travelling through Germany from one area within Salzburg to another). Where workers return to their country of origin after completing one job and before completing the next, the job locations are not considered to be closely related.

Jobs are considered **closely related in time** where it takes no longer than a week to complete the work in Austria. In the case of passenger transport, work activities continue to be closely related in time – even after a week or longer – as long as the passenger group transported remains largely the same.

Since collective notification presupposes **more than one client**, the conditions of the contract with the transport company determine whether such notification can be made. Where the transport company enters into contracts with more than one contractual partner, collective notification can be made (for instance where the transport company **contracts individually with each passenger to be transported**). Where, in contrast, the transport company has **only one contractual partner**, **collective notification is not permitted** and only standard notification or perhaps framework notification is possible (e.g. where the contract is signed with a **tour operator** or **school**).

Collective notification should be considered in the following cases:

- With one vehicle and for more than one client, several types of goods (or several persons) are transported in Austria, at a certain point in time but not necessarily for the entire period.
- After one transport is completed, the driver begins the transport for another client. Here the transport services in Austria have to be provided and completed in both cases within one week and the vehicle must not leave Austrian territory between transports.

Until a separate form is made available for collective notification, the **general form** is to be used, i.e. [ZKO 3](#). These special items need to be considered when completing the form:

- Normally the driver can be entered under Section 3 “Contact person”. A chartered accountant, lawyer or notary public who is established in Austria and authorised by the employer can also be entered.
- It suffices to enter one client, regardless of whether established in Austria or in another country, under Section 4 “(Domestic) principal”.
- Other clients can be listed in a PDF document submitted with notification.
- Where no client can be identified (e.g. in the case of occasional passenger service or non-organised bus tours), the driver’s company should designate itself as the client/principal.

Where for example, in providing occasional passenger service, the service contract is concluded by the employee (driver) providing the service, the driver’s company should designate itself as the client/principal. The same applies for instance when the company does not make any special administrative arrangements prior to the transport and a client/principal cannot be designated or only with disproportionate effort.

- Under Section 5 “Total period of secondment to Austria”, the period during which the transport services should be provided is to be entered (even if no services are provided on certain days within that period).
- Under Section 6 “Location (full address) of the employment in Austria”, the phrase “The vehicle” should be entered in the “Address” field. “Austria” is to be entered in the “City” box.
- The required documents are usually to be kept available in the vehicle. “At the place of employment” (7a) is to be correspondingly checked under Section 7 “Disclosure of mandatory availability of notification documents and wage documents”.
- Only pay documents and records of hours worked can also be kept available at an Austrian branch, parent company or subsidiary belonging to the same company group (see section entitled “Keeping documents available”). In such cases the corresponding box should be checked under Section 7.
- With transport services, the period to be given under Section 8.11 and 8.12 will normally be the same as that given under Section 5.
- The normal hours that the employee usually works (i.e. including outside Austria) are to be entered under Section 8.13 “Duration and scheduling of the agreed normal working hours”. The fact that the employee’s working hours in Austria may vary is of no consequence.
- The German term “Sammelmeldung” should be entered at the end of the form in the “Notes” field for the entire form.

Keeping documents available

The following documents have to be kept readily available:

1. **A1 social security document** (in the language of the issuing country)

In the event that it is not possible to have the A1 document issued prior to the posting an application for issue of the A1 certificate document along with other documents indicating that the employee is registered for social insurance when working in Austria – in German or a translation in each case. Translations **need not be certified**.

2. **A copy of notification of posting**

In some cases, for instance during cabotage operations, a copy of the registration document might not be able to be kept readily available in the vehicle due to scheduling or for technical reasons; in such cases the **transaction number** or **reference number** issued with registration should be kept available.

3. **Pay documents** that show at a minimum **the amount of remuneration due and actually paid out** to the employee **during the assignment in Austria**

The pay documents include:

- a. Employment contract or written record of the content of the employment contract in accordance with Information Directive 91/533/EEC;
- b. Payslip, proof of payment by the employer or bank transfer statements
- c. Wage records
- d. Documents relating to pay categorisation (e.g. education or training and earlier employment periods, if stipulated in the collective agreement as being significant) and
- e. Records of the hours worked for each posted employee

Payslips, proof of wage payment or bank transfer statements **for the period entered** in the notification form **under Section 5 “Total period of secondment to Austria”**: these items are to be kept available during that period if they have already been issued. If the notification period is two days within one month and the remuneration for the work performed during that pay period is only due to be paid out as of the beginning of the following month, the corresponding payslips, proof of wage payment or bank transfer statements can obviously not be kept available on these two days. Where, however, framework or collective notification is submitted, documents including payslips, proof of wage payment or bank transfer statements can be kept available that indicate the remuneration due for previous pay periods included in the period for which notification was submitted.

Wage records are documents intended to clearly show the methods and bases for calculating remuneration and the items it consists of.

Examples of wage records include payroll slips, payroll lists, wage tax cards, notices of the beginning and end of health insurance, lists of allowances and supplements

paid, and records of overtime hours worked, commissions, piece-work or other items used to determine performance-based pay.

Wage records must be available in **German or in German translation**. An **English version or translation** of the **employment contract** (or **written record** of the content of the employment contract in accordance with Information Directive 91/533/EEC) can also be kept available. The translation **need not be certified**.

Proof of wage payment or bank transfer statements can also be in the language of the country of issue (i.e. not in German) if an inspector is able to clearly recognise each pay period, the amount of remuneration and the pay recipient.

The **records of hours worked** can be recorded using the (analogue or digital) recording equipment customarily used in the transport sector, provided that the recordings indicate the hours worked that are required to be paid as specified in the Austrian collective agreement. It should be noted in this regard that additional hours besides driving time may be required to be paid.

Records of hours worked **for the period entered** in the notification form **under Section 5 “Total period of secondment to Austria”** are to be kept available during that period.

4. Where an employee is to be posted from an EU Member State but is not a citizen of an EU Member State, when carrying out cabotage operations that employee must keep available any work permit required for the posting country.

Where an employee who is a citizen of Croatia is to be posted from an EU Member State, when carrying out cabotage operations that employee must keep available any work permit required for the posting country.

Requirement to keep documents readily available: for which employees, where and in what form?

- The documents are to be kept readily available for each and every employee currently carrying out transports in Austria.
- The documents are generally required to be kept in the vehicle in which the employee is travelling and made available to inspection authorities.
- The only exception is the pay documents and records of hours worked, which can be kept available at an Austrian branch, parent company or subsidiary belonging to the same company group instead of in the vehicle, if this has been indicated in the notification form. The documents must then be kept at the place indicated.
- Documents can be kept available either in **printed form** or as **readable electronic documents** (to be viewed on a display); in this case the information and the technical

devices have to be in the vehicle when entering Austrian territory. Retrieving or sending the information from outside the country does not meet requirements. Unreadable electronic data, such as when stored on a USB flash drive, similarly do not meet requirements.