

Employee postings to Austria



PRINCIPLES OF THE CROSS-BORDER ANNUAL LEAVE PAY FUNDS PROCEDURE IN THE AUSTRIAN CONSTRUCTION INDUSTRY

In view of the particular nature of the construction industry, which is characterized by frequent changes of job or frequent breaks in employment, Austria has agreed special leave regulations for construction industry workers and enshrined them in the Construction Workers Leave and Severance Pay Act (Bauarbeiter-Urlaubs- und Abfertigungsgesetz - BUAG).

The BUAG rules are in particular intended to protect the right to paid leave and to ensure full leave entitlement despite breaks in employment. Austria introduced the Annual Leave Pay Funds Procedure to achieve this aim, in that employers pay monthly leave supplements to the Construction Workers Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse - BUAK) to finance employees' future leave payments.

The Construction Workers Leave and Severance Pay Fund (BUAK) is a public-law corporation entrusted with implementing the Act and with managing and processing employees' leave entitlements.

This brochure explains in greater detail the annual leave pay funds procedure's principles as they apply in the event of employees being posted to Austria.

MISCELLANEOUS

Employees whose habitual place of work is not in Austria and who have been posted or transferred by employers to carry out cross-border construction work within the terms of BUAG are included in the annual leave pay fund procedure.

Posting according to BUAG must meet the follow criteria:

- During an existing employment contract
- a company employs
- employees, without an habitual place of work in Austria, for a maximum of 12 months (may be extended once, for unforeseen reasons, by another 12 months)
- for continuous work or as part of a transfer of labour,
- to carry out construction work in Austria,
- within the terms of BUAG.

This furthermore covers employees who, despite having their habitual place of work in Austria, are used by businesses whose registered office is not in Austria to perform work in the Federal territory.

The actual work performed by the employee governs whether an employment contracts falls within the scope of BUAG. Basically the work predominantly performed by the employee is taken as a basis if the employee performs both work which, by its nature, falls within the scope of BUAG and work to which BUAG does not apply.

If a construction worker has been posted to Austria under the above conditions, Austrian law relating to annual leave and thus BUAG applies to his/her employment contract for the duration of his/her employment in Austria, irrespective of the law applying elsewhere.

This results in companies being obliged to pay wage supplements to BUAK for the posting's duration. The obligation to pay wage supplements to BUAK applies from the first day of posting. The supplements only concern annual leave and grant the employee a direct claim to payment of holiday pay against BUAK.

DUTY OF NOTIFICATION

As a rule the posting company has a duty to notify BUAK that employees have been posted to work in the Austrian construction industry. BUAK provides two forms for this, which can be downloaded from the BUAK website at www.buak.at, under “Europaverfahren”. There is a form for notifying the company details and a form for notifying the employee’s personal details.

Postings must basically be notified to BUAK within 14 days of the employee taking up a posting which falls under BUAG, unless a posting to Austria has already been notified to the Austrian Ministry of Finance’s Central Coordination Office for the Control of Illegal Employment (Zentrale Koordinationsstelle für die Kontrolle illegaler Beschäftigung - ZKO), pursuant to section 7b (3, 4) Austrian Employment Contract Law Adaptation Act (AVRAG).

If the posting is for longer than one month, monthly follow-up reports must be submitted to BUAK, which BUAK must receive by the 15th of the month following the reporting month.

The employer must notify employee postings to the Austrian Ministry of Finance’s Central Coordination Office for the Control of Illegal Employment at the latest one week before assumption of the post. Notifications relating to the construction industry will be forwarded to BUAK and will be regarded by BUAK as an initial notification.

SUPPLEMENT CALCULATION AND PAYMENT

The company must pay supplements per employee to finance leave pay for each working day eligible under BUAG.

The level of supplements to be paid by businesses for posted employees depends on the work performed by the employee in Austria and the Austrian collectively agreed wage paid for it. For the duration of the posting, as a minimum, according to section 7 (1) 1 AVRAG cross-border employees have a mandatory entitlement to the statutory remuneration laid down by regulation or collective agreement, paid by comparable companies at the place of work of comparable employees.

The collectively agreed hourly wage is increased by 22% and then multiplied by the leave factor to calculate a weekly supplement for an employee. The level of leave factor is set by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection's regulation and is currently 11.55 for a 39-hour working week. The resulting amount is divided by 5 to obtain the daily supplement.

The supplements to be paid by the firm are prescribed by BUAK for any days of employment during a supplement period. A supplement period is one calendar month. The supplements to be paid are due on the 15th of the second month following the supplement period.

LEAVE ENTITLEMENT

Irrespective of the basic applicable labour law statute, posted employees are eligible for leave for the duration of the posting or transfer to Austria. In the process, one calendar week consisting of 5 working days eligible under BUAG is regarded as an eligible week. Irrespective of the company with which they were acquired the individual eligible weeks are recorded by BUAK and added together.

The number of eligible weeks accumulated by the employees in turn determines the number of days' leave earned by the latter.

The leave entitlement only accrues, however, to the extent of the eligibility for which the business has paid supplements to BUAK. It also accrues in proportion to the number of weeks' employment completed (section 4 (1a) BUAG) within a calendar year.

The entitlement is calculated according to the employment periods recorded by BUAK and can be used immediately.

You can achieve the maximum number of days' leave within a calendar year after 52 eligible weeks. The extent of the leave entitlement depends on the number of weeks' employment you have accumulated. The annual leave entitlement is 30 working days from 1150 weeks' employment, 25 working days for fewer than 1150 weeks' employment.

Leave pay can be claimed from BUAK using the "Einreichung um Urlaubsentgeltansprüche Entsendung" (Submission for cross-border leave pay entitlement) form, which can be downloaded from www.buak.at under Europaverfahren ("Info über ArbeitnehmerInnen"). This must be signed by the company and BUAK must receive it at the earliest once month before and at the latest one month after leave is taken. BUAK will transfer the leave pay direct to the bank account notified by the employee.

The company posting the employee is exempt from the obligation to pay wage supplements to BUAK for the duration of the leave. BUAK pays the supplements on these days. Furthermore BUAK pays the employer contributions incurred during the leave to a value of up to 30.1%. BUAK transfers them direct to the (foreign) social insurance organization. BUAK also pays the employee contributions and PAYE (with effect from an annual tax-free allowance of 100.00).

Employees can be compensated for the eligibility acquired in Austria if they have not taken all their leave entitlement either during the posting, or within 6 months thereafter (for a current employment contract with the posting business). The employee alone must apply for the compensation and it is a condition of the compensation that the employee must not have been in an employment contract subject to BUAG for at least 6 months.

EXEMPTION FROM CROSS-BORDER ANNUAL LEAVE PAY FUNDS PROCEDURE

If a company working in the construction industry with registered office abroad temporarily posts employees to Austria, it is possible for the company to be exempted from paying wage supplements to BUAK.

Exemption is only possible if the company is part of a comparable and equivalent social or leave pay funds procedure in the country where it has its registered office, if the posting company usually conducts its business in the country from which the employees are being posted, or the individual employment contracts exhibit closer ties to the posting country than to Austria, and contributions continue to be paid to the respective fund in the home state during the employment.

BUAK has currently concluded master agreements on mutual employee exemption in the event of posting with Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (ULAK) and Zusatzversorgungskasse des Baugewerbes VVaG (ZVK-Bau), Union des Caisses de France du Réseau Congés Intempéries BTP (UCF) and the Commissione Nazionale Paritetica per le Casse Edili (CNCE), which are members of the SOKA-BAU umbrella organization.

CONTACTS AND INFORMATION

General information on postings:

www.buak.at/Europaverfahren

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WE VALUE YOUR NEEDS!

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Betriebliche Vorsorgekasse

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Fax DW 93 0 99
Mail buak-bvk@buak.at

BUAK Schulungen

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OPENING**Vienna**

Montag, Dienstag, Donnerstag
8.00 Uhr – 15.00 Uhr
Mittwoch 8.00 Uhr – 18.00 Uhr
Freitag 8.00 Uhr – 12.00 Uhr

Tirol, Kärnten und Steiermark

Montag bis Donnerstag
8.00 Uhr – 15.00 Uhr
Freitag 8.00 Uhr – 12.00 Uhr

**Oberösterreich, Salzburg und
Burgenland**

Montag bis Donnerstag
8.00 Uhr – 13.00 Uhr
Freitag 8.00 Uhr – 12.00 Uhr

Vorarlberg

Montag bis Freitag
8.00 Uhr – 12.00 Uhr

LOCATIONS**Vienna**

1050 Wien
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Fax DW 92 1 99
Mail betriebsbetreuung@buak.at

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