

EMPLOYMENT: CONTRACTS AND SOCIAL SECURITY IN AUSTRIA

CONTRACT TYPES

- “Werkvertrag” = Work Contract/Contract for work or service/Contract to produce a work
- “Dienstvertrag” = contract of employment
- “freier Dienstvertrag” = independent employment contract

The employment relationship (and thus the form of the contract) is **not freely selectable**, but **results from** the actual **circumstances** of the respective activity. It always depends on the **content** or the **actual circumstances** of the occupation.

Responsible for the correct form of employment is the contracting authority or the employer.

A contract cannot put the contractor or the employees in a worse place than stipulated by law.

Establishing contracts

- two-way legal transaction
- Offer and acceptance of the contract
- Concurrent declaration of intent
- writing is not mandatory, even oral agreements have a contractual nature

1. SELF-EMPLOYMENT / WORK CONTRACT (GERMAN: WERKVERTRAG)

Self-employed persons are persons who, as a result of an occupational activity, earn income from self-employed work under tax law.

"Neue Selbstständige" (= self-employed persons) carry out an operational activity under a contract for work for which they do not need a business license. The group "New Self-Employed" includes lecturers, artists, experts, journalists, writers, speakers etc. New self-employed persons are not represented by the Chamber of Commerce (Ger.: Wirtschaftskammer).

According to the General Civil Code (Ger.: Allgemeines Bürgerliches Gesetzbuch = ABGB), a **work contract** exists when someone takes over the **production of a work** for a fee. Unlike the "contract of employment" (German: Dienstvertrag) or independent employment contract (German: freier Dienstvertrag), the result of the contract of work is decisive. **The work (a concrete achievement) or a certain success is owed.**

1.1. Work contract

- A specific work is produced for a fee
- There is a (target debt) relationship between the client and the contractor
- for the duration of the work creation
- Target debt ratio: the work is owed (a specific performance/achievement) or a certain success
- The result of the work is paid after it has been handed over
- The work is individualised in advance
- The contracting entity does not have the right to design
- Working time and location are not specified
- Contractor has an entrepreneurial structure (use of own means)
- Right of representation by third parties: no personal obligation/dependency
- Obtaining employees and subcontractors is possible
- Warranty for defects/absence/deficiency of the work
- Taking on the risk of failure, economic risk
- Payment: after issuing the invoice/honorary note

Withdrawal of work contract

- unilateral (i.e., one-sided) withdrawal from a work contract already concluded is not possible
- Force majeure: Contract expires/declared forfeited

1.2. Self-employment, entrepreneur status

- personal independence
- economic independence from the buyer of the work
- the company is designed by itself, the success is achieved according to its own plan
- Freedom of instruction regarding place of work, working time and behaviour at work
- not integrated into the company of the clients
- “Plurality” of clients, meaning several different clients possible
- Use of own equipment
- own company structure
- Involvement of subcontractors, employees possible
- Right of representation by third parties
- corresponding market upturn/presence
- Factual instructions are possible, but not personal directives

Labour law claims

- no right of leave/holiday/vacation
- no continued payment in the event of illness
- No unemployment benefits (AMS)
- no collective bargaining agreement

1.3. Taxation of self-employed occupation

Notification of the commencement of business activities within one month to the tax office (Verf24).

Record keeping, accounting obligation: chronological, complete and timely, document recording and sorting, 7 years of retention obligation.

- Income tax is paid
- Up to a turnover of € 35,000, - net: Exemption of VAT due to the small business regulation

1.4. Social Insurance Institute of the Self-Employed (SVS)

New self-employed persons must report their work to the Social Insurance Institute of the Self-Employed (SVS) themselves. **Deadline: Within one month of the start of the activity.**

A compulsory insurance is obtained if the income in the calendar year exceeds 12 times the monthly ASVG low-income threshold (€ 5,710.32/2021).

Attention: Those who fail to comply with the obligation to register insurance and are retroactively included in compulsory insurance (after the tax notice has been issued) will be charged a surcharge of 9.3% retrospectively, in addition to the insurance instalment charges.

SVS Compulsory Insurance

- in addition to one or more (employed) jobs or minor employment

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- or as self-employed worker
- as soon as the self-employed income in the year exceeds 12 times the monthly ASVG minimum-income threshold.
- Insurance fees (also called premiums) amount to: 26.83% of the self-employed income plus €10.41/month accident (or casualty) insurance
 - Health insurance (6.8%)
 - Pension/retirement insurance (18.5%)
 - Self-employed provision (German: Selbständigenvorsorge) (1.53%) and
 - Accident/casualty insurance (€ 125.04/year)
- **Minimum insurance fees** for the first three years: **€ 138.09/month** (value 2021)
- the **final calculation** of the fees for the respective year happens only after the deposits of the respective income tax assessment (approx. 2 years later): only now the fees can be calculated correctly, resulting in additional claims or credits
- Tip: There is the possibility to adjust the provisional premium basis to the current income: reduction or increase of the contribution basis is possible.
- **Possibility for subsidy for insurance fees from the Artists Social Insurance Fund (KSVF)**
www.ksvf.at
- additional voluntary insurance possible
 - Voluntary supplementary insurance with sickness benefits possible
 - Voluntary unemployment insurance possible

SVS Opting-In (voluntary insurance)

- if the income from self-employment in the calendar year is **below 12 times the monthly ASVG low-income threshold** (< € 5,719.32/2021)
- upon request
- **Health and accident insurance**
- No pension insurance
- Fees amount € 42.78/month (value 2021)
- Monthly entry or termination possible
- Switching to compulsory insurance possible
- no grants from the KSVF possible

2. CONTRACT OF EMPLOYMENT (GERMAN: ANSTELLUNG/ECHTER DIENSTVERTRAG)

If a person owes the employer a **personal labour/service**, it would be classed as an “employment relationship” according to the definition of Austrian tax law.

This is the case “if the active person is **under the direction of the employer** or **is obliged to follow his/her instructions within the business organism of the employer.**”

Under social security law, a work relationship is classed as an “employment relationship” where an occupation is carried out in a relationship of **personal or economic dependence in exchange for remuneration.**

2.1. Employment contract

- Open-ended (permanent or indefinite duration) or for a fixed-term (for a certain/limited period of time)
- personal and economic dependence
- Obligation to perform work on a temporary date/basis
- = Permanent debt ratio
- Entry into the company:
 - What is the operational structure of instructions?
 - Are there any organisational rules?
 - Are there specific working days?
 - Is there a concrete start and an end to daily working hours?
 - Is there an assigned workspace/place?
 - Is an activity assigned?
 - Do certain working procedures have to be followed?
 - Are there internal rules on behaviour in the workplace?
 - Is there a subordination to an existing hierarchy?
 - Is foreign equipment used?
- Obligation to provide work personally (no right of representation by subcontracting)
- Personal binding by instructions
- Control of the execution of the work
- Working hours and location are predetermined
- Use of the work equipment of the employer
- Employer’s duty of care (protection of life and health)
- Employee’s duty of loyalty
- Regular salary (wage)
- Employer is responsible for the levy of social security (ÖGK), taxes, etc.
- Payment: by hours. Transfer by pay slip per month

Labour law claims

- paid leave/vacation/holiday
- paid sick leave
- possible unemployment benefit for standing hours (AMS)
- special labour laws e.g.: Theatre Labour Act (TAG), Employees Protection Act
- Collective bargaining agreements: minimum wage/overtime bonuses/special payments
- Company agreements
- various interest groups: Chamber of Labour, trade unions
- all workers' rights (maternity benefits, maximum daily working hours, family hospice leave, nursing leave, etc.)

Termination/Redundancy, cancellation, termination of employment contracts

Termination and resignation regulations are laid down in the respective laws: Employees' Act, Theatre Labour Act. Differences in fixed-term or open-ended contracts, differences in stage work contract, piece contract and guest contract according to TAG.

Excursus: Service relationship according to "TAG" (acronym for German: Theaterarbeitsgesetz) = Theatre Labour Act

in Austria, the Theatre Labour Act (TAG) applies to contracts between a theatre entrepreneur and persons who undertake to perform artistic works in one or more art subjects for the performance of stage works. The regulations cannot be repealed or limited by the employment contract at the expense of the employee.

From the government bill "Preliminary and Explanations" on the Theatre Labour Act:

Whether a stage employment contract exists in the specific individual case can only be finally determined by the competent labour and social court.

The prerequisites for the performance of "artistic works" (formerly performance of artistic services) and performance of "stage works" remain unchanged.

In comparison with the previous § 1 paragraph 1 SchauspG, § 1 para. 1 does not provide a demonstrative list of the categories of members covered by the TAG, because due to the constant developments of the technical designations in the artistic field, a merely demonstrative list would have to be constantly and repeatedly updated. Materially, the non-acceptance of the demonstrative list does not entail any changes. **Thus, the determination of the TAG applies to persons who perform their artistic activities in the context of a stage work relationship. Those are among others: actors, playwrights, dramaturges, conductors, musicians, assistants, inspectors and prompters, but also répétiteur, set designers, costume designers and artistic assistants or lighting, sound and video designers.**

The formulation "for the performance of stage works" clarified that not only activities during a performance, but also artistic activities preceding the performance are covered.

2.2. Payroll tax and social security

Payroll tax and social security contributions are paid by the employer.

Exceptions: minor/marginal employment, day-to-day employment below the low-income threshold.

- Voluntary or compulsory employee assessment

Austrian Health Insurance Fund (ÖGK)

Employment above the low-income threshold

- Gross fee > € 475.86/month (2021)
- Employer's share of social security: 21.23% of gross salary (value 2021)
- Employee's share of social security: 18.12% of gross salary (value 2021)
- Sickness, accident, pension, unemployment insurance and employee pension fund

Minor employment

- Gross Fee < € 475.86/month (2021)
- no insurance
- No deductions
- Voluntary insurance as a minor employee possible
- Insurance fee is € 67.18 for health, accident and pension insurance
- no unemployment insurance

Day-to-day employment

Registration with the social security system on a **daily basis** and **irregularly** (e.g., for the individual performance dates) as required.

- each application means a separate employment relationship
- before/after the individual day there is no existing working relationship, so there is no insurance relationship
- day-to-day employment can be both marginally and fully insured
- if the fee per day is below the low-income threshold, there is no insurance
- if the remuneration per month is above the low-income threshold, the employee must pay social security contributions to the ÖGK 1.5 years later
- Additional payment does not include unemployment insurance

Multiple employments

if

- due to several minor jobs or
- through several day-by-day occupations or

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- in addition to employment above the low-income limit, there is still a marginal employment and **the gross monthly income exceeds the marginal limit due to all employment altogether**, there will be (in the autumn of the following year) an **additional payment to the ÖGK iHv 14,62%** of the

low income (of which no social security contributions have yet been made).

The subsequent payment results in sickness, accident and pension insurance contributions and periods, but **not for unemployment**.

Several employments can also result in additional payments in payroll tax.

3. INDEPENDENT EMPLOYMENT CONTRACT/INDEPENDENT EMPLOYEES or CONTRACTORS (German: FREIER DIENSTVERTRAG)

The independent employment contract exists if someone undertakes to provide a service **for a certain or indefinite period** for a fee, but **without entering into personal dependence** = permanent debt relationship.

The main difference from the real employee is therefore that the independent employee provides the services in **personal independence**. Caution: If, on the other hand, it is clear that a person must be present at a certain place at certain times, it would not be classed a “independent employment” relationship.

Independent employees are therefore persons who, on the basis of an independent employment contracts, receive pay for a certain or indefinite period of time if they:

- provided Services,
- essentially act personally,
- work without essential resources of their own,
- are contractually obliged to perform their work and are able **to determine their own workflow**.

The Theatre Labour Act (TAG) does not apply to independent service contracts. In the case of an indep. Employment contract, the contractor is not subject to any personal dependence. **Independent employment contracts are only conceivable in exceptional cases**, for example, for (external) substitute actors or singers who perform without rehearsals and instruction.

3.1 Independent employment contract

- Permanent debt
- Personal independence:
 - no instructions regarding working time, place of work and behaviour at work
 - lack of control powers of the contracting authority
 - independent working
 - lack of integration or incorporation into the employer’s business
 - no instructions regarding behaviour at work
- general right of substitution
- Right to refuse orders/works without justification
- not necessarily use of own equipment
- independent employee does not guarantee success
- several employers

Labour law claims

- no minimum wage rate, no collective bargaining agreement

- no entitlement to special payments
- No paid leave (holiday)
- no entitlement to working time restrictions per day

- no right to continued payment of remuneration by the employer in the event of sickness
- not entitled to family hospice care, etc.
- Entitlement to sickness benefit
- Entitlement to weekly allowance (usually 8 weeks before and after giving birth → maternity protection)
- Entitlement to unemployment benefit (AMS)
- Right to insolvency remuneration if the client/employer goes bankrupt
- Right to clearance (“Abfertigung neu” = an additional provisional fund)

3.2. Payroll tax and social security

Independent employees are insured by the clients/employer, the client transfers the social security contributions to the ÖGK.

Exception: if the SVS already has a compulsory payment under the GSVG for the same activity.

Independent employees, on the other hand, pay their taxes themselves with their income tax return.

- **Social security amounts are paid by the employer to the ÖGK**
- **Income must be taxed by independent employee (self-employed income)**

If the income exceeds the monthly ASVG low-income threshold, indep. employees are fully insured.

Employees and employers must therefore **pay social contribution**. The contribution basis is the gross wage.

Independent employees are not only subject to **health, accident and pension insurance, but also to unemployment insurance** (if their pay is above the ASVG minimum limit). The contribution to the company pension scheme (=Betriebliche Vorsorge), the surcharge under the Insolvency Remuneration Insurance Act (= Insolvenz-Entgeltssicherungsgesetz) and the Chamber of Labour levy (= Arbeiterkammerumlage) must also be paid for independent employees.

Earnings below the ASVG minimum threshold

This group of insured persons is subject to the same rules for employees with regard to the low-income threshold, the employer's levy and the social security effect of several small-scale activities carried out at the same time.

Exceptions to compulsory insurance

Compulsory insurance as an independent employee does not occur if, among other things,

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- it is an activity as an artist, in particular as an artist within the meaning of Section 2 (1) of the Artists' Social Insurance Fund Act.

Section 2 (1) Artists' Social Insurance Fund Act:

Artists within the meaning of this Federal Act are those who are active in the fields of fine arts, performing arts, music, literature and film art or those who create works of art in one of the contemporary forms of the fields of art and in the context of an artistic activity.

*Note: This exception to compulsory insurance applies to artists who create **works of art**, not service/labour. **Services/labours** of artistic work are regulated by the **Theatre Labour Act** and are to be treated as genuine **employment contracts** (w.o.: *The Theatre Work Act (TAG) applies in Austria to contracts between a theatre entrepreneur and persons who commit themselves to the performance of artistic works in one or more art subjects.**

For detailed information on social security for the self-employed, the regular employed or independently employed, see the information sheet social insurance <https://freietheater.at/wp-content/uploads/2021/02/IGFT-Infoblatt-Sozialversicherung-2021.pdf>