

SOCIAL SECURITY

If an order or work agreement is received, it is necessary for the time being to determine the type of contract. There are three possibilities:

- **Contract of employment (Ger: Dienstvertrag)**
- **Contract for work (Ger: Werkvertrag)**
- **Independent employment contract (Ger: Freier Dienstvertrag)**

Basically, it is not possible to **choose** which contract of work or contract is involved, but **it is essentially the result of the present real relationship**, under which the services are provided to the client or employer. It is also not decisive how the underlying contract is called; **it always depends on the content or the actual circumstances**. If the characteristics of an employment relationship are present, it is of no use if one concludes a contract called a "work contract" or "independent employment contract". In terms of taxation and social security law, there would still be a "completely normal" employment relationship.

Whether there is an employment relationship or another contractual relationship depends on which features predominate. It is always important to focus on the "overall picture" of the activity. Several criteria have to be met or not met for an employment relationship or no employment relationship to be assumed.

The **contract of employment (Ger: Dienstvertrag)** is characterised by personal work obligations and instructions with regard to working hours and location. There is a permanent obligation, i.e., the employee owes his (personal) labour for a certain period of time or permanently and is integrated into the organisation, which is reflected in the specification of working hours, work location and work equipment by the employer, as well as the direct involvement of the activity in the employer's operational processes, such as regular participation in meetings. Furthermore, an employment contract is characterised by the absence of entrepreneurial risk: An entrepreneurial risk exists in particular if the remuneration depends on the service provided and the expenses associated with the activity must essentially be borne by the contractor himself. With an essentially constant monthly remuneration, there is no entrepreneurial risk.

If the mentioned criteria for an employment relationship are not or not predominantly present, then a business (self-employed) activity can be assumed for tax purposes. Performers (actors, dancers, performers) usually have a real employment relationship (possibly with a piece contract or stage service contract) due to their personal work obligations and the fact that they are bound by time constraints (rehearsals, performances, etc.).

In the case of a **contract for work (Ger: Werkvertrag)**, the contractor undertakes to produce a work or a certain success against payment of a fee/work wage. The contractor owes a specific, contractually defined and "tangible" work result, which they must produce independently and on their own responsibility. The contractor is personally independent of the work purchaser (= client), i.e., not bound by instructions with regard to the place of work, working hours and behaviour at work. Only factual instructions for the production of the work are possible (e.g., by creating a catalogue of requirements before the order is placed).

The contractor is not integrated into the client's organisation, uses their own resources (e.g., their

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own office / study / workshop, company-owned vehicle, PC, telephone ...) and bears the risk of success. Since the result is owed, there is no continuing obligation but a target obligation. The contractor has no personal duty to work, can be represented or use their own employees or subcontractors. If the success is achieved, the contractual relationship is automatically terminated and the agreed fee is to be paid. There is no need for a separate declaration of termination.

Examples of real contracts for work in the theatre sector: set designers, costume designers, cabaret artists, light and sound designers ...

An **independent employment contract (Ger: Freier Dienstvertrag)** is being used if there is an obligation to perform a service without personal dependency and with the possibility of representation.

Demarcation from the employment relationship (Dienstvertrag): The independent employee is not involved in the company organisation and is not subject to the employer's right to issue instructions. Differentiation from the contract for work (Werkvertrag): The independent employee makes their labour available for a specific or indefinite period of time (long-term obligation). Their entitlement to remuneration also exists if there is no work result or if it does not meet the expectations of the client. A certain work or a certain success is not owed.

In the case of so-called "independent employees" (Ger: Freie Mitarbeiter*innen), it is essential to clarify before their admission whether their activity corresponds to the legal contract type of the contract for work or the independent employment contract. Depending on the situation, this has different legal consequences for entitlement to remuneration, social security or also warranty.

Tip: The IG Freie Theaterarbeit has been providing its members with free contract templates for the independent performing arts sector since 2019.

Detailed information on employment relationships can be found in the information sheet "Self-employment, dependent employment, independent employment".

<https://freietheater.at/service/igft-infomaterialien/>

1. 1. SOCIAL INSURANCE FOR NEW SELF-EMPLOYED (WORK CONTRACT= Ger. WERKVERTRAG)

1.1. Compulsory insurance in accordance with GSVG

For self-employed artists, from 1.1.2001, they are compulsorily insured as "new self-employed" according to the Commercial Social Insurance Act (GSVG) if their income (= profit from self-employed activity) **exceeds the ASVG earnings limit of € 5,710.32 (value 2021)**.

(Low-income threshold 2016: € 4,988.64 / year € 415.72 / month; 2017: € 5,108.40 / year € 425.70 / month; 2018: € 5,256.60 / year € 438.05 / month; 2019: € 5,361.72 / year € 446.81 / month; 2020: € 5,527.92 / year € 460.66 / month; **2021: € 5,710.21 / year € 475,86 / month**)

1.2. Insurance Fee (also called premiums) amounts

The calculation period for compulsory insurance according to GSVG is always the calendar year. The fees amount to **approximately 26.83 % of the annual profit** from the freelance/self-employed activity and includes (value 2020):

- Health insurance (6.8%)
- Pension/retirement insurance (18.50%)
- Self-employed provision (Ger: Selbständigenvorsorge) (1.53%) and
- Accident/casualty insurance: approx. € 125.04/year (€ 10.42 /month)

Minimum fees for an annual income of € 5,710.32 are **€ 138.09/month** (2021).

The amount of the final fees depends on the income generated in the contribution year. What is taken into consideration is the income from self-employed work shown in the tax assessment. To this are **added the health and retirement insurance fees** required for that contribution year. The result is the final premium (fee) base, which can only move within the minimum or maximum premium base. (The GSVG maximum premium base is € 75,180 in 2020, resulting in a monthly premium base of € 6,265 and a monthly maximum contribution of € 1,690.99). Any additional income is exempt from social insurance.

1.3. Notification to the Social Insurance Institute of Self-employed persons

If you are a new self-employed person and assume that you will have a self-employed income above the relevant insurance limit in the current year (see point 1), you must register with the **Social Insurance Institute for Self-Employed Persons (SVS)**. The insurance cover is established with the submission of the **insurance declaration**. The SVS initially stipulates the premiums in the amount of the corresponding minimum premiums (see point 1.2.) on a quarterly basis. If it turns out in the course of or at the end of the year that the actual income has remained below the insurance limit, the insurance will still remain in place and premiums will not be refunded.

If it becomes apparent in the course of the year that the self-employed income is above the insurance limit and the notification to the SVS is only then made, the premiums will be stipulated retrospectively from the start of self-employment, but the insurance cover for health and accidents will only commence from the time of the report.

Attention: The tax office transmits the relevant information from the income tax assessments to the social security institution so that the SVS is fully informed about social security-relevant self-employed income. As soon as you have calculated an independent income above the insurance limit, you should contact the SVS, otherwise an additional penalty of 9.3% must be paid.

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1.4. Opting In / Voluntary Insurance

If the insurance limit is not reached, there is the option of voluntarily opting into the SVS health and accident insurance (attention: no pension insurance) for € 42.78 (2021). This variant is in most cases cheaper than self-insurance with the regional health insurance fund (Vgl.: freiwillige Selbstversicherung lt. § 19a ASVG, page 7 u. 8.). No KSVF grant is possible for opting in.

1.5. Self-employment provision

Artists and new self-employed persons with compulsory insurance must pay mandatory premiums amounting to 1.53% of the premium basis as a monthly pension fee. These fees lead - e.g., if the self-employed work is discontinued or when retiring - to a service comparable to the "new severance pay" for employees. The insured person must select a provision fund and sign a contract within 6 months of the beginning of mandatory insurance. 9 pension funds are available. If the choice of the fund is not made in time, the insured person gets assigned to one. Entitlement to benefits exists if contributions have been paid for at least 3 years and business activity has been discontinued for at least 2 years or when the statutory pension begins. The amount of benefits depends on the amount of the premiums and the fund's investment performance. The provision funds inform the insured annually about the current account balance.

1.6. Insurance benefits

The insurance according to GSVG includes a **20% deductible** for visits to the doctor (not for co-insured children and also not for hospital stays). If you have a low income, you can apply for exemption from the prescription fee and deductible (requirement: average monthly income in 2021 below € 1,000.48 for single persons / € 1,578.36 for married couples).

The amount of a possible pension is calculated from the duration of the pension insurance and the amount of the premiums. The state guarantees those who have acquired a pension entitlement (at least 15 years of premiums) the pension plus any compensatory allowance.

The compensatory allowance supplements the pension by the difference between total income and the reference rate. It is due 14 times a year in the amount of the difference between the sum of the pension (gross), net income and any maintenance claims on the one hand and the respective reference rate on the other. **The reference rates for the equalisation allowance from 2021 are € 1,000.48 (for single persons) and € 1,578.36 (for married couples in the same household).**

1.7. Grant for artists under the KSVFG

The "Künstlersozialversicherungsfonds" (KSVF) (translation: artist social insurance fund) pays contributions grants to artists with GSVG pension insurance under the following conditions:

- **Application from the artist to the KSVF**
- **Practice/performance of an artistic activity:** artists in the sense of the KSVFG is a person *"who creates works of art in the context of an artistic activity in the fields of visual arts, performing arts, music, literature, film art or in one of its contemporary forms within the field of art."*
A commission of the artists, which consists of Curia, decides on the "artist status".
- **Minimum income** from self-employed artistic activity in the amount of the applicable ASVG marginal earnings limit.

Artistic secondary activity: This income must be in connection with the applied art area or the artistic activity that has already been positively assessed. Furthermore, this income can

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only be taken into account up to a maximum of 50% of the above-mentioned values of the minimum limits (ASVG insignificance limit).

Concrete example:

- a) You paint and give music lessons on the side. Is that possible? no!
- b) You play in a band and give guitar lessons on the side. Is that possible? Definitely! Through your shows you earn € 4,000,- in 2021, through the lessons € 3.000,-. How is the limit now calculated: € 4,000 + € 2,855.16 (€ 5,710.32 x 50 %) = € 6,855.16

- The **maximum total income** may not exceed **€ 30,930.90** in the calendar year of 2021. This amount increases if there is a duty of care for children.
- The **maximum contribution subsidy** in 2021 is **€ 1,896.00 annually** or **€ 158.00 per month**. The contribution subsidy is transferred directly from the fund to the SVS. The artist concerned is therefore only required to pay the insurance amounts reduced by the contribution subsidy.

The application for a grant can be submitted up to four years retrospectively (in 2021, applications can be made retrospectively for the years 2017-2020.)

For more information:

- **Info sheet of the IGFT on the KSVF** (download on www.freietheater.at)
- **„Künstler-Sozialversicherungsfonds“ (= artists social insurance fund)**, Goethegasse 1, 1010 Vienna (<https://www.ksvf.at>)

1.8. Idle (i.e., resting or dormant) notification of self-employed artistic activity

Since January 1, 2011, it has been possible to report self-employed artistic activities (and the associated compulsory insurance with the SVS) on a dormant basis in order to be able to receive unemployment benefits during the period of the dormant registration if the other requirements are met. With this new regulation, which is anchored in the Artists' Social Insurance Structural Act, it has become possible, in principle, to be able to receive unemployment benefit even if the self-employed income in the relevant calendar year exceeds the marginal earnings threshold.

According to KSVF-SG, only self-employed artistic activities within the meaning of § 2 of the Artists Social Insurance Fund Act can be reported as dormant. For non-artistic activities, if they continue during the dormant report, there is the option of clearly distinguishing them BEFORE the dormant report in consultation with the SVS and splitting them off and earning them non-artistically up to the insignificance limit. (ATTENTION: Clarify the non-artistic activity in advance: Commercial...)

For the dormant notification, you need a certificate of artist status at the KSVF, which KSVF grant recipients already have. All other artists must apply for the determination of their artist status specifically for the dormant notification. If no artist status is recognised according to the KSVFSG, no notice of suspension is valid and compulsory insurance is retroactive if the applicable insurance limit with the self-employed income is exceeded in a calendar year, which leads to a conflict with unemployment benefits received for the corresponding period.

An activity is only considered dormant if in a period of time there is **actually no independent artistic work**, i.e., also that no operating expenses may be claimed from the tax office in the income tax return during this period, and continuous depreciation is not possible.

There is no valid social insurance with the SVS for the period of the dormant report and there is no entitlement to a KSVF grant.

The dormant report must be submitted to the KSVF, the SVS only receives it and forwards it. A

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dormant report is not possible retrospectively, it must be submitted in advance.

IMPORTANT: Only ever use the dormant notification in the months when unemployment benefits are being received.

For more information:

<http://www.ksvf.at/ruhendmeldung.html>

2. SOCIAL INSURANCE FOR EMPLOYEES

2.1. Social security for genuine employees

Genuine employment contracts are subject to social insurance obligations under the **General Social Insurance Act (ASVG)** if the monthly salary is above **the applicable marginal earnings limit (€ 475.86 / 2021)**. Employees must be registered by the employer with the Austrian Health Insurance Fund (ÖGK). The employer must keep a wage account, calculate the social security contributions on a monthly basis and submit them to the ÖGK. The insurance includes health, pension, accident, unemployment insurance and an employee pension fund.

Employees pay a contribution of **18.12% (employee share 2021)** of the gross salary. Employers pay an additional **21.23% (employer's share in 2021)** of the gross salary.

2.2. Social insurance for independent employment

Independent employment contracts are subject to social insurance obligations under the ASVG if the monthly salary is **above the applicable marginal earnings limit (€ 475.86 / 2021)**.

Independent contractors have pension, health and accident insurance. Since January 1st, 2008 they have been entitled to cash benefits from health insurance (maternity allowance, sickness allowance), which are calculated according to the same rules as for genuine employees. Furthermore, independent employees have been insured against unemployment since January 1st, 2008 and enjoy insolvency protection.

The employer is obliged to report independent employment contract to the Austrian Health Insurance Fund immediately upon commencement of work. This reporting requirement also applies to minor independent employment contracts.

For tax purposes, however, the income as an independent employee must be reported as independent income.

2.3. Social insurance for marginal employment

Marginally employed people are those who earn an income from their independent employment contract that does **not exceed the marginal earnings threshold (€ 475.86 / 2021)**. Up to this limit, income from a real or a free employment relationship remains **insurance-free** if one has no other employment relationship. When assessing marginality, the employees and employers must be considered separately.

On January 1, 2017, the daily marginal earnings limit was lifted. For the assessment of whether there is a marginal part-time employment relationship or not, only the monthly marginal part-time employment limit is decisive.

Marginally employed persons are only insured against accidents, provided that no voluntary health and pension insurance is registered with the ÖGK.

2.4. Voluntary self-insurance

The ÖGK offers various options for voluntary self-insurance:

2.4.1. Self-insurance for marginal employment

For employees whose income does not exceed the **marginal earnings threshold**, the option of voluntary self-insurance according to § 19a ASVG in health and pension insurance has been created on request. The contribution for self-insured persons in health and pension insurance according to §

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19a ASVG is € 67.18 per month (2021).

Attention with several marginal employments: If an employee receives income from several employers, which in total (per month) exceeds the marginal earnings threshold, there is compulsory health and pension insurance coverage. In this case, at the end of the year, the employee himself / herself is required to pay social security contributions from the ÖGK.

Example: A secretary earns € 290 per month in a marginal employment relationship and € 310 in an additional marginal employment relationship. Since her overall earnings exceed the marginal income threshold, she now has to pay the compulsory insurance fees for health, accident and pension insurance herself.

The social security obligation also occurs if someone earns, in addition to a "normal" employment relationship with full insurance obligations, in another minor employment relationship, e.g. € 80, -. The € 80.00 is then subject to insurance.

Attention: The flat-rate employee contribution for several minor jobs is **14.12%** and is usually only collected by the ÖGK in autumn of the following year. Even several marginal employment relationships **do not constitute compulsory unemployment insurance**. This means that there is no entitlement to unemployment benefit.

Excursus:

Employer's side: Regardless of the amount of the remuneration, all employees (including marginal part-time employees) must be registered with the ÖGK. A wage account must be kept for everyone. For marginally employed employees, employers only pay the accident insurance contribution. However, if the total wages of all marginally employed persons exceeds **1.5 times the marginal earnings threshold (€ 713.79 / 2021)**, the employer has a flat-rate employer contribution of 1.20% in addition to the accident insurance contribution 16.40% to be paid.

2.4.2. Service cheques

With service checks, private individuals in households can pay employees who take on typical household tasks on the basis of marginal employment, e.g. B. Cleaning, simple gardening or babysitting.

Requirements for payment with service checks: No longer training may be required for the work. Employers can only be private individuals. The employed person (employee) needs a work permit in Austria. The agreed hourly wage must not be below the minimum wage. Family members living in the same household cannot pay each other with service checks.

How am I insured with the service cheque?

If payment is made with service checks, the person is only insured against accidents. The employer pays the 2% contributions. There is no health, pension or unemployment insurance.

Income limits for employees

- With service cheques, you can earn up to a **maximum of € 651.86 (value 2021)** per month as a person in employment(employee)with a single employer.
- You can work as a service member with several employers on the basis of service cheques. However, if the total income exceeds the limit of € 651.86 (value 2021), full insurance is created and you have to pay contributions (approx. 15%) to the health and pension insurance.

Income limits for the employer

- As an employer, you may pay an individual employee with service checks with a maximum of € 651.86 (value 2021) per calendar month.

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- As an employer, you can employ several employees with service checks, but you must observe the limit of € 977.79 (value 2021) in total. If this limit is exceeded per month, you have to pay an employer tax of 16.4%.

Voluntary health and pension insurance at a reasonable price

If you do not earn more than a maximum of € 651.86 (value 2021) per calendar month with a service check, you can take out a **self-insurance for health and pension insurance**. This currently costs **€ 67.18 (value 2021)** per month. In order to maintain such self-insurance (according to Paragraph 19a ASVG), you must have a regular employment relationship based on a service check (**submission of a check at least every two months**).

dienstleistungsscheck-online.at

2.4.3. Students who are not compulsorily insured in a statutory health insurance can generally apply for health insurance for the duration of their studies, as long as their place of residence is in Austria. Attention: no pension insurance! The contribution for self-insurance for students is **€ 63.44 per month (2021)**.

2.4.4. If you do **not have your own income**, the ÖGK still offers the option of **self-insurance for health coverage (ATTENTION: No pension insurance, no unemployment insurance)**. From 2021 a monthly fee of **€ 454.86** has to be paid. If the gross income is **above the minimum contribution basis (€ 1,506.15)**, the contribution is **calculated at 7.55%**. (Attention: here the income of the spouse is calculated as a percentage.)

Reduction of the contribution: The contribution can be reduced by a separate application and by submitting the relevant evidence (e.g., tax assessment, pay slip, savings account, proof of maintenance payments), as far as it is based on the economic conditions appear justified.

The reduction takes effect **from the beginning of the insurance if the application is submitted at the same time as the application for self-insurance, otherwise from the first day of the month following the application**; the reduction is effective until the end of the next calendar year.

The **minimum contribution** for 2021 is € 113.71 / month.

More information about self-insurance:

<https://www.gesundheitskasse.at/cdscontent/?contentid=10007.837841&portal=oegkwportal>