

SOCIAL INSURANCE

If an order or work agreement is received, it is necessary 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 kind of 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

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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 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.

Differentiation 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 provides its members with free contract templates for the independent performing arts sector.

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 € 6.010,92 (value 2023)**.

ASVG – Minimum Thresholds:

Year	Monthly	Yearly
2016	€ 415,72	€ 4.988,64
2017	€ 425,70	€ 5.108,40
2018	€ 438,05	€ 5.256,60
2019	€ 446,81	€ 5.361,72
2020	€ 460,66	€ 5.527,92
2021	€ 475,86	€ 5.710,21
2022	€ 485,85	€ 5.830,20
2023	€ 500,91	€ 6.010,92

1.2. Insurance Fees (also called premiums)

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 2023):

- Health insurance (6.8%)
- Pension/retirement insurance (18.50%)
- Self-employed provision (Ger: Selbständigenvorsorge) (1.53%) and
- Accident/casualty insurance: € 10.97 /month

Minimum fees at SVS for an annual income of € 6,010.92 are **€ 145.36/month** (2023).

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 monthly maximum premium base in 2023 is € 6,825 and a monthly maximum contribution of € 1,556,10). 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 your income tax declaration 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 a self-employed income above the insurance limit, you should contact the SVS, otherwise an additional penalty of 9.3% must be paid.

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 **€ 45.03 (2023)**. 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 2023 below € 1,110.26 for single persons / € 1,751.56 for married couples).

In the case of above-average expenses due to illness, this income limit increases by 15%. For parents, the income limit per child increases by € 171.13 if their income is less than € 408.36.

The amount of any pension is calculated from the duration of the pension insurance and the amount of the contributions. Anyone who has acquired a pension entitlement (at least 15 years of contributions) is guaranteed by the state the pension plus any compensatory allowance. The "compensatory supplement" (Ger.: "Ausgleichszulage") supplements the pension with 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 compensatory allowance from 2023

- € **1,110.26** for single people /
- € **1,751.56** for married couples/registered partnerships

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 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!*

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Through your shows you earn € 4,000 in 2023, through the lessons € 3,000. How is the limit now calculated: € 4,000 + € 3,005.46 (€ 6.010,92 x 50 %) = € 7.005,46

The **maximum total income** in the calendar year 2023 may not exceed the amount of **€ 32,559.15** . This amount increases by € 3,005.46 per child

- **The maximum** contribution subsidy in 2023 is **€1,896 per year** or **€158 per month**. The contribution subsidy is transferred directly from the fund to the SVS.
- The artist concerned will therefore only need to pay the insurance amounts reduced by the contribution subsidy.

The application for a subsidy can be made retrospectively for up to four years (in the year 2023 retrospective applications are possible for the years 2019 - 2022.)

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. notice of suspension of self-employed artistic activity

Since January 1, 2011, it is possible to report self-employed artistic activities (and the associated compulsory insurance with the SVS) as “dormant/resting” 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 KSV-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 notification of suspension, you need a certificate of artist status at the KSVF, which KSVF subsidy recipients already have. All other artists must apply for the determination of their artist status specifically for the suspension notification . If no artist status is recognized under the KSVFG , no notification of suspension applies and compulsory insurance applies retrospectively if the applicable insurance limit with self-employed income has been exceeded in a calendar year, which leads to a conflict with unemployment benefits received for the corresponding period.

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

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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 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 (Ger: Allgemeines Sozialversicherungsgesetz ASVG)** if the monthly salary is above **the applicable marginal earnings limit (€ 500,91 / 2023)**. 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 2023)** of the gross salary. Employers pay an additional **21.13% (employer's share in 2023)** 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 (€ 500,91 / 2023)**.

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 (€ 501,91 / 2022)**. 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 § 19a ASVG is **€ 70.72 per month (2023)**.

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 are then subject to insurance.

Attention: The 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 (€ 752.86 / 2023)**, the employer has to pay an additional "employer contribution" of 16.40% in addition to the accident insurance contribution of 1.20%.

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., 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 € 686.18 (value 2023)** 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 € 686.18 (value 2023), you enter full insurance and you have to (retrospectively) 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 € 686.18 (value 2023) per calendar month.
- As an employer, you can occupy several employees with service checks, but you must observe the limit of € 1.029,27 (value 2023) in total. If this limit is exceeded per month, you have to pay an employer tax of 16.4%.

Voluntary health and pension insurance with service checks

If you do not earn more than a maximum of € 686.18 (value 2023) per calendar month with a service check, you can take out a **self-insurance for health and pension insurance**. This currently costs **€ 70.72 (value 2023)** 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**).

Further information: 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 **€ 66.79 per month (2023)**.

2.4.4. If you do **not have any income of your own**, the ÖGK still offers the option of **self-insurance for health coverage (ATTENTION: No pension insurance, no unemployment insurance)**. From 2023 a monthly fee of **€ 478.82** has to be paid.

Reduction of the contribution: The contribution can be reduced by means of a separate application and by submitting the relevant proof (e.g. tax assessment, wage slip, savings book, proof of maintenance payments), insofar as this appears justified based on the economic circumstances. The contribution can be reduced to **€ 119.71 per month**.

The reduction takes effect **from the beginning of the insurance if the**

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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.

Sources:

- SVS contribution values:
<https://www.svs.at/cdscontent/?contentid=10007.816718&portal=svsportal>
- SVS brochures and information sheets:
<https://www.svs.at/cdscontent/?contentid=10007.816771&portal=svsportal>
- ÖGK self-insurance:
<https://www.gesundheitskasse.at/cdscontent/?contentid=10007.867314&portal=oegkportal>
- General information on service checks:
<https://www.bvaeb.at/cdscontent/?contentid=10007.854454&portal=bvaebportal>