

Information on secondment from EU/EEA countries and Switzerland:

A number of short excerpts on employee secondment are provided below. They are provided solely for informational purposes and are not legally binding. For legal information, please contact the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection at www.entsendeplattform.at

Please note the information windows when completing the employee secondment notification (ZKO3). These provide important, helpful information for preparing notifications.

True economic circumstances – standard for determination

§ 2 para. 1 of the Austrian Act to Fight Wage and Social Dumping (LSD-BG)

The true economic circumstances, and not the external appearance of the situation, determines whether employment, or employee cross-border secondment or provision exists within the meaning of the LSD-BG.

Who is required to submit a notification:

Under § 19 para. 1 of the Austrian Act to Fight Wage and Social Dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG), foreign companies/**employers** (seconders) must notify the Austrian Central Coordination Office (Zentrale Koordinationsstelle) of employees seconded to Austria **BEFORE** the employees **start work**. In the case of mobile employees in the transport area, notification must be submitted **BEFORE entry** into Austrian federal territory.

Under § 19 para. 2 LSD-BG, the BMF ZKO3 online form **must** be used to automatically submit the notification.

Separate notifications must be submitted for each secondment; notification of subsequent changes must be submitted without delay.

Subsequent changes concern the following:

- Change in the deployment location(s)
- Change in the length or location of work for individual employees
- Termination of employment
- Start of employment later than the time indicated in the first notification
- When secondment indicated in a previous notification does not come to pass for individual employees or all of the employees indicated

Note: Form ZKO3 Change Notification must be used to extend an employee secondment notification, subsequent notification or for other changes/corrections. If this change notification form does not include an option for your change, please contact the Austrian Central Coordination Office (Zentrale Koordinationsstelle) by email. New notifications must be submitted for subsequent places of employment.

Information on secondment of employees:

§ 19 para. 1 LSD-BG [...] An employer (Beschäftiger) that seconds an employee for work in Austria is considered the employer (Arbeitsgeber) for the notification requirements in this paragraph and paragraphs 2 and 3. [...]

These employers (Beschäftiger) are therefore responsible for the **notification requirements** in § 19 para. 2 and 3 and **keeping wage documents available** in accordance with § 22 para. 1 LSD-BG.

What are notification documents and where they must be kept available:

Under § 21 para. 1 LSD-BG, the notification documents for seconded employees must **as a rule always** be available at the workplace/deployment location and must be presented or provided in electronic form at the time of inspection. In addition to the workplace/deployment location (place of employment), § 21 Abs. 2 LSD-BG provides alternative options for how the documents can be kept available.

To use these options, they must be indicated in the notification (ZKO3), and when this is done they become **exclusive and binding**. (choice of options)

If these documents are **not** available from the person indicated/at the indicated location, an administrative penal procedure will be initiated. Subsequent changes or dividing them among different locations is not permitted.

Note: Mobile employees in the transport area (goods and/or passenger transport) must have the notification documents in the vehicle **at the time of entry** into Austrian federal territory (at the time of border crossing) or must immediately make them available electronically on-site at the time of inspection. In this case, the vehicle is the place of employment.

Under § 21 para. 1 LSD-BG, the following notification documents are required:

- The secondment notification (ZKO3)
 - notifications of changes (change notification)
- Documents concerning registration for social security A1/E101 if the seconded employee is not required to apply for social security in Austria, or

- Equivalent documents **in the German language**, such as
 - Request for issue of the social security document **AND**
 - Confirmation from the competent social security institution that the employee is covered by foreign social security for the secondment period
- If required, an official work permit in the country of domicile of the employer (Arbeitgeber) for the seconded employee (third country citizens – e.g. Chinese citizens require a work permit in Germany)

An employer (Arbeitgeber) who (§ 26 para. 1 LSD-BG)

- does not submit a notification or a notification of subsequent changes in information in accordance with § 19 para. 2 and para. 3 LSD-BG, or does not submit such notifications in timely fashion or in full, or
- intentionally submits incorrect information in the notification or change notification, or
- does not keep the required documents available at the location/from the person indicated in the notification or does not immediately make them available electronically (on-site) to the authorities in accordance with § 21 para. 1 and 2

commits an administrative offence, which will be punished with a fine.

What are wage documents and availability of wage documents in accordance with § 22 para. 1 LSD-BG

The wage documents for **all employees seconded** in the notification must, as a rule, **ALWAYS** be available at the place of employment/deployment location during domestic employment or the entire secondment period indicated in point 6. Even when the employment of some employees ends sooner.

The following are wage documents:

- Employment contract or statement of terms and conditions (Dienstzettel)
- Pay slips
- Proof of wage payment or bank transfer slips
- Wage records
- Work records
- Documents concerning wage classification for checking the remuneration required (collective agreement or minimum wage) under **Austrian** law for the seconded employee during the period of employment

All wage documents must be available **in the German language**, except for the employment contract, which may be presented in German or English.

Non-availability of wage documents in accordance with § 28 LSD-BG

An employer (Arbeitgeber) who

- does not keep wage documents available in accordance with § 22 para. 1 LSD-BG

commits an administrative offence, which will be punished with a fine

Forwarding of notifications to competent authorities

The Austrian Central Coordination Office forwards secondment notifications for Croatian and third country citizens to the foreign employee offices of Public Employment Service Austria to check the requirements for an **EU secondment confirmation/approval or work permit**. Public Employment Service Austria is solely responsible for processing and issuing such documents.

Information is available at: www.ams.at

The notification is sent to

- the competent health insurance carrier and,
- if it concerns construction work, to the Austrian Employee Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse – BUAK).

Self-employed persons (sole proprietors **without employees**) providing services under a contract for services („one-man company“) are **NOT** required to submit a secondment notification; they do not have to submit the form to second themselves.

A company or self-employed person performing a trade that is **regulated** in Austria must submit a **notice of cross-border services** (grenzüberschreitende Dienstleistungsanzeige) to the Austrian Federal Ministry of Science, Research and Economy.

Information is available at www.bmwfw.gv.at

The **true economic circumstances** and not the external appearance of the situation determines whether (true) independent contract performance takes place (as a rule with an employment contract). Simple possession of a business licence is not sufficient (§ 2 Abs. 1 LDS-BG).

Instructions on how to complete the form are directly available in the browser.

Please note the information windows available in the browser.