



EU Posted Worker Directive

All EU countries had until 30th July 2020 to transpose the new directive in their national law. Here is a brief overview of the Posted Workers Notification (ZKO notification) in Austria.

Important points to remember :

- 1) Notice of posting or hiring out workers
- 2) Simplified notification
- 3) Who is responsible for notifying of the posting or temporary employment (in the case of a temporary employment agency) of workers?
- 4) Legal Representative

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Notice of posting or temporary employment (in the case of a temporary employment agency workers):

Undertakings that are established in an EU, an EEA Member State or in Switzerland are required :

- to notify the Austrian Central Co-ordinating Agency Charged with Investigating Illegal Employment (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung, ZKO)
- of the posting or hiring out of workers
- before the start of work (when posting or hiring out mobile workers in the transport sector, prior to their entry to Austria)
- using form **ZKO 3** (when posting workers) or **ZKO 4** (when hiring out workers).

Undertakings established in third countries (i.e. countries outside the EU, the EEA and Switzerland) can post or hire out workers on a cross-border basis only under a posting permit, an employment permit and/or a temporary employment permit. Special provisions apply to workers from Croatia.

The details of the information that posting undertakings established in an EU or EEA Member State are required to provide varies in some cases depending on whether workers are posted or hired out.

In the event of any **change after the initial report**, a change report is required to be made without delay; examples include:

- Any change of the actual place or places of work
- Any change of the number or scheduling of individual employees' working hours
- Termination of employment relationships
- First day of work if later than the date given in the initial report
- Individual employees already reported who will not be posted or hired out

A **new ZKO form** must also be submitted:

- for every new contract with a new client
- posting or hiring out additional employees who have not yet been reported.

2

Simplified notification

A single notice for repeated cases of cross-border employment.

Only one notice is required for repeated cases of posting or hiring out workers where these repeated cases of posting or hiring out :

- are stipulated in one and the same service provision contract or service procurement contract
- with the same client or user undertaking in Austria
- or take place within the same company group.

In such cases the notification of posting or hiring out workers is to be submitted :

- before the very first case of cross-border employment
- relating to one client or user undertaking in Austria
- for a period not exceeding three months.

A single notice referring to more than one client.

Only one notice is required even for several different clients where the posting is for the purpose of :

- fulfilling several similar service provision contracts
- that are related in terms of period and place of fulfilment.

Every client is to be indicated in the notice submitted in such cases.

3

Who is responsible for notifying of the posting or hiring-out of workers?

- In general the notification obligation applies to the **employer** when posting employees and to the **temporary work agency** when hiring out workers.
- The **user undertaking** is required to submit the notice, however, where the worker is posted or hired out by a user undertaking to which that worker was previously posted or hired out in another country.
- Where the posting or hiring-out employer is established in a third country and where the posted or hired-out worker is a third-country citizen, the **client or user undertaking in Austria** is required to obtain a (temporary) employment permit for that worker.

To submit notice, you can complete forms ZKO 3 and ZKO 4 online. Failure to provide such notice is punishable (fine of up to EUR 10,000).

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Legal Representative

Legal Representative has to be appointment in the Host country.

Notification under trade law of the work carried out by the posted or hired out worker as cross-border provision of services – proof of qualification

The work carried out by the posted or hired out employee in Austria is regarded as a service provided in Austria by the posting company or temporary work agency based outside Austria. It is a cross-border service provided in Austria; as with any comparable service provided in Austria, the Austrian authorities require such services to comply with quality standards as defined in trade law.

Source:

https://www.entsendeplattform.at/cms/Z04/Z04_10/home

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