PARENTAL LEAVE FOR FATHERS ACT

Parental Leave for Fathers Act (Väter-Karenzgesetz, VKG), Federal Law Gazette (FLG) no. 651/1989, as amended by

FLG I no. 16/2000 FLG I no. 103/2001 FLG I no. 100/2002 FLG I no. 130/2003
FLG I no. 58/2010

Status as of 1 August 2010

Federal Act establishing parental leave for fathers (Väter-Karenzgesetz - VKG)

Article I

Chapter 1

Scope

Section 1. (1) This Federal Act shall apply to:
1. all employment relationships based on a contract under private law,
2. employment relationships governed by the Homeworking Act (Heimarbeitsgesetz, HAG) 1960, Federal Law Gazette no. 105/1961;
3. employment relationships under public law with the Federal Government;
4. employment relationships pursuant to Art. 14 Para. 2 and Art. 14a Para. 3 of the Federal Constitutional Law (Bundes-Verfassungsgesetz, B-VG) that have to be specified by the Federal Government.

(2) The following shall be excluded:
1. employment relationships of agricultural and forestry workers as defined by the Agricultural Labour Act (Landarbeitsgesetz, LAG) 1984, Federal Law Gazette no. 287;
2. employment relationships with an Austrian state (Land), a local authorities association (Gemeindeverband) or a municipality (Gemeinde), unless they have to be specified by the Federal Government.

Chapter 2

Parental leave

Entitlement to parental leave

Section 2. (1) Unless hereinafter specified otherwise, the employee shall, at his request, be granted parental leave until the child’s second birthday without remuneration, if he lives in the same household with the child; simultaneous parental leave of the two parents shall not be admissible, except for the case specified in Section 3 Para. 2.

(2) If the child’s mother is entitled to parental leave, the employee’s parental leave shall begin no earlier than after expiry of the mother’s prohibition of employment after giving birth to a child (Section 5 Para. 1 of the Maternity Protection Act (Mutterschutzgesetz, MSchG) 1979, Federal Law Gazette no. 221, similar Austrian legislation or similar legislation of the EEA member states).

(3) If the mother is not entitled to parental leave, the employee’s parental leave shall begin eight weeks or, in the case of premature births, multiple births or Caesarian section births, twelve weeks after
birth at the earliest. If the mother receives operational support (Betriebshilfe) or maternity benefit pursuant to Section 102a of the Commercial Social Insurance Act (Gewerbliches Sozialversicherungsgesetz, GSVG), Federal Law Gazette no. 560/1978, or pursuant to Section 98 of the Farmers Social Insurance Act (Bauern-Sozialversicherungsgesetz, BSVG), Federal Law Gazette no. 559/1978, and if the eight-week period prior to childbirth was shorter, parental leave shall begin at the point of time set out under Section 102a Para. 1 sentence 4 GSVG and Section 98 Para. 1 sentence 4 BSVG at the earliest.

(4) The duration of parental leave must be at least two months.

(5) If the employee takes parental leave as of the earliest possible date (Paras. 2 or 3), he shall notify his employer of the beginning and the duration of parental leave eight weeks after the child’s birth at the latest. The employee may notify his employer no later than three months, or if the parental leave period is shorter than three months, no later than two months prior to the end of his parental leave that and until when he will extend parental leave. Notwithstanding the expiry of these notification periods, parental leave pursuant to Para. 1 may be agreed.

(6) At the employee’s request, the employer shall be obliged to issue a written statement on the beginning and duration of parental leave. The employee shall co-sign said written statement. Such written statements shall be exempt from stamp duties and Federal administration fees.

(7) The employee shall immediately notify his employer of the discontinuation of the same household with the child and has to resume his work if the employer requests so.

(8) The parental leave shall end before the agreed date, if the father stops living in the same household with the child and the employer requests the employee to return to work prematurely.

Parents sharing parental leave

Section 3. (1) Parental leave pursuant to Para. 2 may be split two times and taken alternately with the child’s mother. Each share of parental leave must be at least two months and shall begin at the point of time specified in Sections 2 Para. 2 or 3 or immediately subsequent to a parental leave period taken by the mother.

(2) On the occasion of the first change in the person caring for the child, the employee may take parental leave at the same time as the mother for a period of one month, with the entitlement to parental leave ending one month prior to the point of time stipulated under Section 2 Para. 1 or Section 4 Para. 1 third sentence.

(3) If the employee takes parental leave subsequent to the mother’s parental leave, he shall notify his employer of the beginning and the duration of his parental leave at least three months prior to the end of the mother’s parental leave. If, however, the mother takes parental leave subsequent to the prohibition of work pursuant to Section 5 Para. 1 MSchG 1979, Federal Law Gazette no. 221, or similar Austrian legislation or similar legislation of the EEA member states, and said parental leave is shorter than three months, the employee shall notify his employer of the beginning and duration of his parental leave by the end of the period under Section 2 Para. 2 at the latest. Notwithstanding the expiry of these notification periods, parental leave pursuant to Para. 1 may be agreed.

(4) In other respects, Section 2 Paras. 6 to 8 shall apply.

Postponed parental leave

Section 4. (1) The employee may agree with the employer that he postpones three months of his parental leave and takes it before the child’s seventh birthday, unless hereinafter specified otherwise. In this context, the requirements of the business and the reason for taking parental leave shall be taken into account. However, postponed parental leave may only be taken if the parental leave pursuant to Section 2 or 3 has ended at the end of the child’s 21st month of age at the latest, if the child’s mother also takes postponed parental leave, at the end of the child’s 18th month of age.

(2) If the postponed parental leave not yet taken is longer than the period between the child’s entry into school and its seventh birthday or if the child enters school only after its seventh birthday, it may be agreed that the postponed parental leave shall be taken upon the child’s entry into school. If another child is born, this shall not impede the agreement on taking the postponed parental leave.

(3) The employer shall be notified of the intention to take postponed parental leave at the points of time specified under Section 2 Para. 5 or Section 3 Para. 3. If no agreement can be reached within two weeks from notification, the employer may file an action on the grounds of taking postponed parental leave with the competent court within another two weeks, in default whereof the consent shall be deemed given. If no agreement has been reached or if an action has been filed, the employee may notify his
employer that, instead of the postponed parental leave, he will take parental leave until the child’s second year. The same shall apply if the court decides in favour of the employer.

(4) The employer shall be notified of the beginning of the postponed share of parental leave at least three months prior to the requested point of time. If no agreement can be reached within two weeks from notification, the employee may start the postponed parental leave at the requested point of time, unless the employer has filed an action with the competent court within another two weeks on grounds of the point of time when starting the postponed parental leave.

(5) In the case of legal disputes pursuant to Paras. 3 and 4, no party shall be entitled to be reimbursed by the other party for costs related to the court proceedings, no appeal shall be admissible against a judgment of a court of first instance and – irrespective of the value of the matter in dispute – decisions of the court of first instance may only be appealed to for the reasons set out in Section 517 of the Code of Civil Procedure (Zivilprozessordnung, ZPO) and due to non-admission of a change to an action (Klagsänderung).

(6) If the postponed parental leave is taken during an employment relationship other than the one existing at the time of the birth of the child, an agreement with the new employer shall be required before taking postponed parental leave in any case.

(7) In other respects, Section 2 Paras. 6 to 8 shall apply.

Parental leave of adoptive fathers or foster fathers

Section 5. (1) Unless hereinafter specified otherwise, an employee shall also be entitled to parental leave under the conditions and circumstances set out under Sections 2, 3 and 4, if he

1. has adopted – on his own or with his wife – a child under the age of two (adoptive father);
2. provides unpaid foster care to a child under the age of two with the intention to adopt the child (foster father).

(2) In the case of adoption or the placement in unpaid foster care, parental leave shall begin upon the adoption or the foster child’s placement or subsequent to parental leave taken by the mother, adoptive mother or foster mother.

(3) If the employee takes parental leave as of the earliest possible date, he shall notify his employer without delay about the beginning and the duration of parental leave pursuant to Section 2 or 3. Notwithstanding the expiry of this notification period, parental leave pursuant to Section 2 or 3 may be agreed.

(4) If an employee adopts a child that is older than 18 months but younger than two years or if he provides unpaid foster care to such child with the intention to adopt it, he may take parental leave for a period of up to six months after the child’s second birthday.

(5) If the employee adopts a child after its second birthday but before its seventh birthday or if he provides unpaid foster care to such child with the intention to adopt it, he shall be entitled to parental leave for a period of six months on the occasion of adoption or the placement in unpaid foster care. In other respects, Sections 2 and 3 shall apply.

Parental leave in the event of the mother being prevented

Section 6. (1) If the mother, adoptive mother or foster mother is prevented from personally caring for the child due to the occurrence of an unforeseen and inevitable event for a period which is not just relatively short, the employee (father, adoptive father or foster father as defined in Section 5 Para. 1) shall, at his request, be granted parental leave for the time of her being prevented but no longer than until the child’s second birthday, if he lives in the same household with the child. The same shall apply in case of prevention of a mother, adoptive mother or foster mother who permissibly takes parental leave after the child’s second birthday.

(2) Only the following events shall be deemed unforeseen and inevitable:

1. death;
2. stay in a hospital and nursing home;
3. serving a prison sentence and any other detention based on an official order;
4. serious illness;
5. discontinuation of the same household of the mother, adoptive mother or foster mother with the child or discontinuation of the care of the child.
(3) The employee shall also be entitled to parental leave if he has already taken parental leave, has taken up or terminated an agreed part-time employment or has announced parental leave or part-time employment for a later point of time.

(4) The employee shall notify his employer of the beginning and expected duration of parental leave without delay and shall furnish proof of the circumstances establishing the entitlement.

(5) Sections 7 to 7c shall be applied.

Protection against notice of termination of employment and dismissal during parental leave

Section 7. (1) An employee who takes parental leave pursuant to Section 2, 3 or 5 must neither be given notice of termination nor be dismissed, unless otherwise specified in Para. 3. The protection against notice of termination of employment and dismissal shall commence upon notification, however, no sooner than four months prior to the start of parental leave, but not before the child’s birth. The protection against notice of termination of employment and dismissal shall end four weeks
1. after the end of parental leave or a share of parental leave,
2. after the end of parental leave or part-time employment, which is taken due to the mother, adoptive mother or foster mother being prevented.

(2) The expiry of the employment permit (Beschäftigungsbewilligung), the work permit (Arbeitserlaubnis) or the certificate of exemption (Befreiungsschein) pursuant to the Employment of Foreigners Act (Ausländerbeschäftigungsgesetz, AuslBG), Federal Law Gazette no. 218/1975, of a foreign employee will be suspended until that date on which his employment relationship may be terminated with legal effect, taking into account the protection against notice of termination of employment and dismissal.

(3) Section 10 Paras. 3 to 7 and Section 13 MSchG as well as, for homeworkers, Section 31 Para. 3 MSchG shall apply. The employee may be dismissed only after the consent of the court has been obtained. Section 12 Paras. 2 and 4 MSchG shall be applied.

Right to information

Section 7a. During the period of parental leave, the employer shall inform the employee about important occurrences in the business affecting the interests of the employee on leave, in particular insolvency proceedings, restructurings in the business and career development measures.

Employment during parental leave

Section 7b. (1) Besides the employment relationship from which he is on leave, the employee (father, adoptive father or foster father) shall be entitled to work marginal part-time if the remuneration due for this job per calendar month does not exceed the amount specified in Section 5 Para. 2 no. 2 of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, ASVG), Federal Law Gazette no. 189/1955. Any violation of the duty to perform work in such jobs shall not have any effect on the employment relationship from which he is on leave. The work performed within the scope of such jobs shall be agreed between the employee and the employer prior to each work assignment.

(2) Furthermore, the employee may agree with his employer, besides the employment relationship from which he is on leave, to take on employment which exceeds the marginal earnings threshold for a maximum of 13 weeks per calendar year. If parental leave is not taken during the entire calendar year, such employment may only be agreed on a pro rata basis.

(3) With the employer’s consent, an employment as defined in Para. 2 may also be entered into with a different employer.

Application of other provisions of the Maternity Protection Act

Section 7c. With regard to the entitlement to other payments, in particular one-time benefits (Section 67 Para. 1 of the Income Tax Act (Einkommensteuergesetz, EStG) 1988) and to the employee’s legal claims associated with the duration of the employment period, Section 15f Para. 1 MSchG shall apply, with regard to the annual leave entitlement, Section 15f Para. 2 MSchG shall apply, and with regard to the employee’s right to a flat or other accommodation provided by the employer, Section 16 MSchG shall apply during the period of protection against notice of termination of employment and dismissal.
Chapter 3
Part-time employment and re-scheduling working hours

Entitlement to part-time employment

Section 8. (1) The employee shall be entitled to part-time employment up to the child’s seventh birthday at the latest or any later date of the child’s entry into school, provided that

1. the employee has maintained the employment relationship for an uninterrupted period of three years at the time of taking up part-time employment and
2. the employee has worked in a business (Section 34 of the Labour Constitution Act (ArbVergesetz, ArbVG), Federal Law Gazette no. 22/1974, or Section 139 LAG 1984) with more than 20 employees at that time.

The beginning and duration of the part-time employment as well as the number and scheduling of the working hours shall be agreed upon with the employer, taking into account the interests of the business and the interests of the employee. Employees shall not be entitled to part-time employment during an apprenticeship.

(2) When calculating the minimum period of the employment relationship pursuant to Para. 1 no. 1, all periods of employment with the same employer in immediately preceding jobs with this employer shall be taken into account. Likewise, the periods of employment relationships which are continued with the same employer following interruption due to the promise of or an agreement stipulating re-employment shall be credited to the minimum period of the employment relationship. Notwithstanding Section 7e in conjunction with Section 15f Para. 1 third sentence, periods of parental leave under this Federal Act shall be credited to the minimum period of the employment relationship.

(3) With regard to determining the number of employees pursuant to Para. 1 no. 2, the number of employees who are regularly employed in the business shall be decisive. In businesses where the number of employees is seasonally fluctuating, the required minimum number of employees shall be deemed met if the average number of employees in the year prior to taking up part-time employment amounted to more than 20.

(4) In businesses with 20 employees and less, a works agreement as defined by Section 97 Para. 1 no. 25 ArbVG or Section 202 Para. 1 no. 24 LAG may expressly contain the provision that employees are entitled to part-time employment pursuant to Para. 1. All provisions which apply to part-time employment pursuant to Para. 1 shall apply to such part-time employment. The termination of such a works agreement shall become effective only for the employment relationships of those employees who have not requested part-time work in writing or have not taken up part-time employment on the date of termination.

Agreed part-time employment

Section 8a. An employee who has no right to part-time employment pursuant to Section 8 Para. 1 or 4 may enter into an agreement on part-time employment with the employer up to the child’s fourth birthday at the latest specifying its beginning and duration as well as the number and scheduling of the working hours.

Common provisions on part-time employment

Section 8b. (1) The prerequisites for taking up part-time employment pursuant to Sections 8 and 8a are that the employee lives in the same household with the child or has child custody pursuant to Section 167 Para. 2, Section 177 or 177b of the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB), Law Gazettes No. 946/1811, and that the child’s mother is not on parental leave at the same time.

(2) The employee can be granted part-time employment only once for each child. The duration of such part-time employment must be at least two months.

(3) The part-time employment may be taken up no sooner than

1. after expiry of the mother’s prohibition of employment after giving birth to a child (Section 5 Para. 1 MSchG or similar Austrian legislation, similar legislation of the EEA member states) or
2. eight weeks or, in the case of premature births, multiple births or Caesarian section births, twelve weeks after birth, if the mother is not employee (prerequisites set out under Section 2 Para. 1 no. 2).

In this case, the employee shall notify the employer in writing thereof eight weeks after the child’s birth at the latest, specifying the duration of the part-time employment as well the number and scheduling of working hours. Section 2 Para. 3 second sentence shall be applied.
(4) If the employee intends to take up part-time employment at a later point of time, he shall notify his employer thereof in writing at least three months prior to the intended beginning, specifying the beginning and duration of the part-time employment as well the number and scheduling of working hours. However, if the time between the end of the period as set out in Para. 3 and the beginning of the intended part-time employment is less than three months, the employee shall submit a written notification of the part-time employment eight weeks after the child’s birth at the latest.

(5) The employee may request both a change in the part-time employment (extension, change to the number of hours or scheduling) and a premature termination only once. The employer shall notify the employee of the time in writing no later than three months, or if the part-time employment is shorter than three months, no later than two months prior to the intended change or termination.

(6) The employer may request both a change in the part-time employment (change to the number of hours or scheduling) and a premature termination only once. The employer shall notify the employee of the time in writing no later than three months, or if the part-time employment is shorter than three months, no later than two months prior to the intended change or termination.

(7) If a calendar year also contains times of part-time employment, the employee shall be entitled to other, in particular one-time benefits as defined in Section 67 Para. 1 EStG 1988, pro rata for the times of full-time and part-time employment in the calendar year.

(8) At the employee’s request, the employer shall be obliged to issue a written statement on the beginning and duration of the part-time employment or a confirmation of not taking part-time employment. The employee shall co-sign said written statement. Such written statements shall be exempt from stamp duties and Federal administration fees.

(9) The employee’s part-time employment shall end prematurely if he takes parental leave or takes up part-time employment under this Federal Act for another child.

Proceedings in the case of entitlement to part-time employment

Section 8c: (1) In businesses that have a works council responsible for the employee, said works council shall be involved in the negotiations on the beginning or duration of the part-time employment or the number or scheduling of working hours at the employee’s request. If no agreement can be reached within two weeks from notification, representatives of the statutory interest groups of employers and workers may be asked to participate in the negotiations if the employee and the employer mutually agree so. The employer shall record the result of the negotiations in writing. This document shall be signed both by the employer and the employee and a copy shall be given to the employee.

(2) If no agreement on the beginning and duration of the part-time employment as well the number and scheduling of working hours can be reached within four weeks from notification, the employee may take up part-time employment at the conditions as notified by him, unless the employer files a motion for amicable settlement pursuant to Section 433 Para. 1 ZPO with the competent labour and social court, if applicable, on a public court day (Gerichtstag). The result of the negotiations pursuant to Para. 1 shall be enclosed to the motion.

(3) If no amicable settlement can be reached within four weeks from receipt of the motion by the labour and social court, the employer shall file an action seeking the employee’s consent to the conditions of part-time employment as suggested by the employer at the competent labour and social court within another week; if the employer does not file such action in the specified period, the employee may take up part-time employment at the conditions as notified by him. If the attempt to reach a settlement is made only after the expiry of the four-week period, the deadline for filing the action shall commence on the day following the attempt to reach a settlement. The labour and social court shall decide in favour of the employer if the requirements of the business outweigh the employee’s interests. If the labour and social court finds against the employer, the part-time employment intended by the employee shall take effect from the date the judgment becomes final.

(4) If the employee intends to change or terminate the part-time employment before the agreed date, Para. 1 shall be applied. If no agreement can be reached within four weeks from notification, the employer may file an action against this request at the competent labour and social court within another week. If the employer does not file an action, the change or the premature termination of the part-time employment notified by the employee shall become effective. The labour and social court shall decide in favour of the employer, if the requirements of the business outweigh the employee’s interests with regard to the intended change or premature termination.

(5) If the employee intends to change or terminate the part-time employment before the agreed date, Para. 1 shall be applied. If no agreement can be reached within four weeks from notification, the employer may file an action seeking the change or premature termination at the labour and social court
within another week; if the employer does not file such action in the specified period, the part-time employment shall remain unchanged. The labour and social court shall decide in favour of the employer, if the requirements of the business outweigh the employee’s interests with regard to the intended change or premature termination.

(6) In the case of legal disputes pursuant to Paras. 3 to 5, no party shall be entitled to be reimbursed by the other party for costs related to the court proceedings. No appeal shall be admissible against a judgment of a court of first instance and – irrespective of the value of the matter in dispute – decisions of the court of first instance may only be appealed to for reasons set out in Section 517 Para. 1 nos. 1, 4 and 6 ZPO.

**Proceedings in the case of part-time employment upon agreement**

Section 8d. (1) In businesses that have a works council responsible for the employee, said works council shall be involved in the negotiations on the part-time employment, its beginning and duration as well the number and scheduling of working hours at the employee’s request.

(2) If no agreement can be reached within two weeks from notification, the employee may sue the employer for consent to the part-time employment, including its beginning and duration as well the number and scheduling of working hours. The labour and social court shall dismiss the action, if the employer has refused consent to the requested part-time employment for objective reasons.

(3) If the employee intends to change the part-time employment or terminate it before the agreed date, Para. 1 shall be applied. If no agreement can be reached within two weeks from notification, the employee may file an action seeking the change or premature termination of part-time employment at the competent labour and social court within another week. The labour and social court shall dismiss the action, if the requirements of the business outweigh the employee’s interests with regard to the intended change or premature termination.

(4) If the employer intends to change or terminate the part-time employment before the agreed date, Para. 1 shall be applied. If no agreement can be reached within two weeks from notification, the employer may file an action seeking to change or prematurely terminate the part-time employment at the competent labour and social court within another week; if the employer does not file such action in the specified period, the part-time employment shall remain unchanged. The labour and social court shall decide in favour of the employer, if the requirements of the business outweigh the employee’s interests with regard to the intended change or premature termination.

(5) Section 8c Para. 6 shall be applied.

**Parental leave instead of part-time employment**

Section 8e. (1) If the employee and the employer do not reach an agreement on part-time employment pursuant to Sections 8 and 8a, the employee may notify the employer within a week that he will take parental leave

1. instead of taking up part-time employment or
2. until the labour and social court has made a decision,
but no longer than until the child’s second birthday.

(2) If the court does not decide in favour of the employer in a legal dispute pursuant to Section 8c Para. 3 or if it does not decide in favour of the employee pursuant to Section 8d Para. 2, the employee may notify the employer within one week from receipt of the judgment that he will take parental leave until the child’s second birthday at the latest.

**Protection against notice of termination of employment and dismissal in the case of part-time employment**

Section 8f. (1) The protection against notice of termination of employment and dismissal shall in principle commence upon notification of the part-time employment, however, no sooner than four months prior to the intended start of the part-time employment, but not before the child’s birth. It shall apply until four weeks after the termination of part-time employment but up to four weeks after the child’s fourth birthday at the latest. Section 7 Para. 3 shall be applied. The provisions on the protection against notice of termination of employment and dismissal shall also apply during proceedings pursuant to Sections 8c and 8d of this Federal Act.

(2) If the period of part-time employment extends beyond the child’s fourth birthday or if it commences after the child’s fourth birthday, a notice of termination of employment given by the employer on grounds of the part-time employment intended or actually taken up may be contested in court. Section 105 Para. 5 ArbVG shall be applied.
(3) If the employee takes up another gainful employment during part-time employment without the employer’s consent, the employer may give notice of termination of the employment on grounds of this gainful employment within eight weeks from having obtained knowledge thereof, contrary to Paras. 1 and 2.

Part-time employment of an adoptive father or foster father

Section 8g. Sections 8 to 8f shall also apply to adoptive fathers or foster fathers, subject to the proviso that the part-time employment may start upon the adoption or the foster child’s placement at the earliest. If the employee intends to take up part-time employment at the earliest possible point of time, he shall immediately notify the employer thereof, specifying the beginning and duration as well the number and scheduling of working hours.

Re-scheduling working hours

Section 8g. Sections 8 to 8g shall also apply to any change in the scheduling of working hours intended by the employee, provided that the number of working hours is left out of consideration.

Chapter 4
Other provisions

Requesting parental leave at a later date

Section 9. (1) If the mother’s, adoptive mother’s or foster mother’s employer denies part-time employment and the mother does not take parental leave in that period, the employee may take parental leave during that period but until the child’s second birthday at the latest.

(2) After denial of the requested part-time employment by the mother’s employer, the employee shall notify his employer of the beginning and duration of parental leave without delay and shall furnish proof of the circumstances establishing the claim.

Resignation due to a child’s birth

Section 9a. In case of taking parental leave pursuant to Sections 2, 3, 5, 6 or 9, the employee may resign from the employment relationship prematurely at least three months before the end of parental leave. If the parental leave period is shorter than three months, the employee shall resign from the employment relationship prematurely no later than two months prior to the end of parental leave.

Chapter 5
Special provisions for public-service employees

Section 10. (1) For employees that are in an employment relationship
1. with the Federal Government,
2. as defined in Section 1 Para. 1 no. 4,
3. pursuant to Section 1 Para. 2 of the Contractual Public Employees Act 1948 (Vertragsbedienstetengesetz, VBG), Federal Law Gazette no. 86, the deviations stipulated in the following paragraphs shall apply.

(2) Section 2 Para. 5 last sentence and Section 5 Para. 3 last sentence shall be applied subject to the proviso that parental leave may be granted, unless this is in conflict with any compelling job-related reasons.

(3) Teachers cannot take postponed parental leave in the last four months of the school year.

(4) Section 2 Para. 8 shall not be applied. If the father stops living in the same household with the child, parental leave pursuant to this Federal Act shall end. From this point of time until the end of the parental leave initially granted pursuant to this Federal Act, the public-service employee shall be deemed taking unpaid leave as defined in the relevant public-service provisions. However, if the employer requests so, the public-service employee shall resume work earlier.

(5) Section 4 shall be applied subject to the proviso that the public-service employee may take postponed parental leave at the point of time requested by him.

(6) Section 4 Para. 3 second until last sentence and Para. 4 second sentence shall not be applied to Federal public-service employees, teachers employed by the Austrian Laender (state teachers) (Section 1 of the State Teachers Service Act - Landeslehrer-Dienstrechtsgesetz, LDG 1984), state teachers working in agriculture and forestry education (Section 1 of the Agriculture and Forestry State Teachers Act -
According to the statutory salary provisions. For teachers, such compensatory time shall not be

Section 1 of the Civil Service Act (Beamten-Dienstrechtsgezetz, BDG) 1979, Federal Law Gazette no. 333, Section 55 Para. 4 or 5 LDG 1984, Federal Law Gazette. no. 302, or in Section 56 LLDG 1985, Federal Law Gazette no. 296, or who perform a school supervisory function, as well as to public-service employees working in school supervision.

(9) An employment as defined in Section 7b Para. 3 shall require approval of the administrative authority (human resources department). Section 56 Para. 4 BDG 1979 shall be applied.

(10) Section 8 Para. 1 shall be applied to Federal public-service employees, state teachers (Section 1 LDG 1984), agriculture and forestry state teachers (Section 1 LLDG 1985) and form teachers subject to the proviso that these public-service employees shall be entitled to opt for part-time employment up to the child’s seventh birthday at the latest or up to the child’s later entry into school. The provisions of Section 8 Para. 1 governing the number of hours and scheduling of the part-time employment and Section 8b Paras. 5 and 6 shall be applied with the following deviations:

1. part-time employment shall be granted for
   a) reducing the weekly working hours of full-time employment (classroom teaching hours or annual standard hours) by up to 50 per cent or
   b) reducing the weekly working hours of full-time employment (classroom teaching hours or annual standard hours) by more than 50 per cent for the requested period during which the father is entitled to childcare benefit.

2. The reduction of hours shall be agreed in such a way that the remaining regular weekly hours (classroom teaching hours or annual standard hours) result in an integral number (in the case of teachers: full teaching units). The remaining regular weekly hours (classroom teaching hours or annual standard hours) pursuant to no. 1 lit. a
   a) must not amount to less than half of the regular weekly working hours required for full-time employment (classroom teaching hours or annual standard hours) and
   b) must amount to less than the regular working hours required for full-time employment (classroom teaching hours or annual standard hours).

3. Part-time employment may be denied by the administrative authority only if the public-service employee, due to the part-time nature of the employment and for substantial job-related reasons, could neither work in his previous job nor in a job at least equivalent to his previous position under public sector employment law.

4. The provisions on protection against notice of termination of employment and dismissal shall also apply during appellate proceedings contesting denial of a part-time employment.

5. Section 8f shall be applied taking into account the changes resulting from Sections 20 to 22 MSchG.

6. When specifying the hours during which the public-service employee has to carry out his work, his personal circumstances and, in particular, the reasons for his working part-time shall be taken into account in so far as they do not conflict with any important job-related interests.

7. At the public-service employee’s request, the administrative authority may order a change in the number of hours or a premature termination of the part-time employment in so far as this does not conflict with any important job-related interests.

8. Section 47 Paras. 3 and 3a LDG 1984 shall be applied to teachers employed by the Austrian Laender who take up part-time employment.

(11) If, due to the specific job-related circumstances, full working hours (in the case of teachers: teaching units) cannot be accurately accomplished in the case of the public-service employees as defined under Para. 10, the non-integral number shall be increased to the next higher full number rather than to the next lower full number.

(12) A public-service employee as defined under Para. 10 may only be asked to also work beyond the weekly hours agreed if this work is immediately necessary to avoid damage and if there is no public-service employee available whose weekly work hours (classroom teaching hours or annual standard hours) have not been reduced. The time of such additional work shall be set off as compensatory time or paid according to the statutory salary provisions. For teachers, such compensatory time shall not be
admissible. The first sentence shall not be applied to teachers whose classroom teaching hours have been reduced by 25 per cent at the most.

(13) Section 8 Para. 1 shall be applied to judge candidates and judges subject to the proviso that they are entitled to part-time employment up to the child’s seventh birthday at the latest or up to the child’s later entry into school. The provisions of Section 8 Para. 1 governing the number of hours of the part-time employment and Section 8b Paras. 5 and 6 shall be applied to judge candidates and judges with the following deviations:

1. “Part-time employment” shall be replaced by “half-time employment”. Half-time employment shall mean a reduction of regular working hours by half.
2. For the premature termination of a half-time employment period, Section 76c of the Judges Services Act (Richterdienstgesetz, RDG) shall apply.

(14) Section 8f Para. 2 last sentence shall not be applied to the other public-service employees not covered by Paras. 8, 10 and 13, and Sections 8 and 8a shall be applied subject to the proviso that

1. part-time employment shall in no case be permissible if the public-service employee, due to the part-time nature of the employment and for substantial job-related reasons, could neither work in his previous job nor in a job at least equivalent to his previous position under public sector employment law, and
2. Section 8f shall be applied taking into account the changes resulting from Sections 20 to 22 MSchG.

(15) Section 7b Para. 2 shall not be applied to judges.

(16) Section 9a shall not be applied to

1. public-service employees and
2. contractual public employees whose employment commenced before 1 January 2003 unless stipulated otherwise by an ordinance pursuant to Section 46 Para. 1 last sentence of the Act on Corporate Staff Provision (Betriebliches Mitarbeitervorsorgegesetz, BMVG), Federal Law Gazette I no. 100/2002.

(17) Sections 8a, 8c, Section 8f Para. 2 last sentence and Section 8h shall not be applied to public-service employees.

(18) Section 8c Para. 1 and Section 8d Para. 1 shall be applied to administrative offices that do not fall within the scope of Part II of the Labour Constitution Act (Arbeitsverfassungsgesetz, ArbVG), Federal Law Gazette no. 22/1974, subject to the proviso that the works council shall be replaced by the staff representation body (Personalvertretung).

(19) Section 8e shall be applied to public-service employees subject to the proviso that, in the case of denial of the part-time employment by the administrative authority pursuant to Para. 10 no. 3, the employee shall be entitled to take parental leave instead of working part-time or until a final administrative decision has been decreed.

Chapter 6

Final provisions

References

Section 11. Where this Federal Act refers to any other Federal Act, the latter shall be applied as currently amended.

Mandatory provisions

Section 11a Unless specified otherwise in this Federal Act, the rights to which the employee is entitled to pursuant to Sections 2 to 11 and Section 12 Para. 2 must neither be suspended nor limited by an employment contract or standards of collective law.

Transitional provisions

Section 12. (1) Parents, adoptive and foster parents shall have claims or entitlements that were newly generated by Federal Law Gazette no. 833/1992 only if the child was born after 31 December 1992. The notification periods for taking parental leave or working part-time to be agreed shall be extended by four weeks after the promulgation of this Federal Act if the child was born between 1 January 1993 and the promulgation of the Federal Act, Federal Law Gazette 833/1992. Claims or entitlements of parents, adoptive or foster parents whose child was born before 1 January 1993 shall be determined in accordance with the statutory provisions that were valid immediately before they were changed by this Federal Act.
(2) Existing provisions in standards of collective law or individual agreements concerning the inclusion of periods of parental leave when calculating claims or entitlements that depend on the duration of the employment relationship shall be credited to the claims or entitlements arising pursuant to Section 7 (Section 15 Para. 2 last sentence MSchG).

(3) Only male employees (fathers, adoptive and foster fathers) shall have claims or entitlements that are newly generated by Federal Law Gazette I no. 153/1999 if the child was born after 31 December 1999. Claims or entitlements of male employees (fathers, adoptive or foster fathers) whose child was born before 1 January 2000 shall be determined in accordance with the statutory provisions that were valid immediately before they were changed by this Federal Act.

**Transitional provisions (optional) for births after 30 June 2000 and before 1 January 2002**

**Section 12a.** (1) Male employees (fathers, adoptive and foster fathers) whose children were born after 30 June 2000 but before the promulgation of this Federal Act, Federal Law Gazette I no. 103/2001, may, if either the child's mother or father are on parental leave or have postponed a part of the parental leave on the date of the promulgation, notify their employer within three months from the promulgation of the law as to whether they will take parental leave until the child's second birthday pursuant to the provisions of this Federal Act as amended by Federal Law Gazette I no. 103/2001.

(2) Starting from 1 January 2002, male employees whose children were born after 30 June 2000 but before 1 January 2002 may enter into an agreement on an employment as defined in Section 7b Paras. 2 and 3 of this Federal Act as amended by Federal Law Gazette I no. 103/2001.

(3) Part-time employment agreed upon in accordance with the provisions of this Federal Act as amended by Federal Law Gazette I no. 153/1999 before 1 January 2002 shall remain unchanged, unless the employer and the employee agree otherwise.

(4) Part-time employment ordered by administrative decision in accordance with the provisions of this Federal Act as amended by Federal Law Gazette I no. 153/1999 before 1 January 2002 shall remain unchanged, unless a modification is ordered by administrative decision at the public-service employee’s request.

**Execution**

**Section 13.** This Federal Act shall be executed by the following:

1. for employment relationships with the Federal Government, the Federal Government; if, however, the sphere of responsibility of only one minister is concerned, the respective minister;
2. a) for employment relationships of teachers at public compulsory schools (Art. 14 Para. 2 B-VG) and
   b) for employment relationships of teachers at public agricultural and forestry occupational schools and medium-level secondary agricultural and forestry colleges and educators at public school boarding houses that are either exclusively or mainly designated for students of public agricultural and forestry occupational schools and medium-level secondary agricultural and forestry colleges (Art. 14a Para. 3 B-VG), the respective Austrian state (Land);
3. regarding exemption from stamp duty (Section 4 Para. 2), the Federal Minister of Finance;
4. with regard to all other provisions, the Federal Minister for Labour and Social Affairs, with regard to exemption from Federal administration fees, in agreement with the Federal Minister of Finance.

**Entry into force**

**Section 14.** (1) Section 8 Paras. 2 to 5, Section 8 Para. 6 second sentence, Section 9 Para. 1, Sections 12 and 13 of this Federal Act as amended by Federal Law Gazette no. 833/1992 shall enter into force on 1 January 1993.


(3) Section 6 Para. 4, Section 8 Para. 10, Section 10 Para. 7 no. 4 and Para. 9 no. 2 as well as Section 11a as amended by the Federal Act, Federal Law Gazette no. 434/1995, shall enter into force on 1 July 1995.

(4) Section 10 Paras. 6 to 11 as amended by the Federal Act, Federal Law Gazette I no. 61/1997, shall enter into force on 1 July 1997.

(6) Sections 2 to 8a, Section 10 Paras. 2 to 6, 10 and 11 as well as Section 12 Para. 3 of this Federal Act as amended by the Federal Act, Federal Law Gazette I no. 153/1999, shall enter into force on 1 January 2000.

(7) Section 10 Paras. 5 and 7 as amended by the Federal Act, Federal Law Gazette I no. 6/2000, shall enter into force on 1 January 2000.

(8) Sections 2 to 10 as amended by the Federal Act, Federal Law Gazette I no. 103/2001, shall enter into force on 1 January 2002 and shall apply to male employees whose children are born after 31 December 2001, unless stipulated otherwise under Section 12a.

(9) Section 9a and Section 10 Para. 16 as amended by the Federal Act, Federal Law Gazette I no. 100/2002, shall enter into force on 1 January 2003, unless stipulated otherwise by means of an ordinance pursuant to Section 46 Para. 1 last sentence of the Act on Corporate Staff Provision (BMVG).

(10) Section 10 Para. 9 and Para. 10 nos. 1 und 2 as amended by the Federal Act, Federal Law Gazette I no. 130/2003, shall enter into force on 1 January 2004 and shall apply to fathers whose children are born after 31 December 2001.

(11) Section 7 Para. 1 no. 2, Sections 8 to 8h and Section 10 Paras. 10, 13, 14, 17 to 19 as amended by the Federal Act, Federal Law Gazette I no. 64/2004, shall enter into force on 1 July 2004 and shall apply to fathers (adoptive or foster fathers) whose children are born after 30 June 2004. For fathers (adoptive or foster fathers) whose children were born before 1 July 2004, the provisions of Section 7 Para. 1 no. 2, Sections 8, 8a and 10 as amended by the Federal Act, Federal Law Gazette I no. 64/2004, shall continue to apply. Notwithstanding the aforementioned, part-time employment or a change to the work schedule pursuant to Sections 8 to 8h and Section 10 Paras. 10, 13, 14, 17 to 19 as amended by the Federal Act, Federal Law Gazette I no. 64/2004 may be requested by a

1. father (adoptive or foster father), if he or the child’s mother (adoptive or foster mother) is on parental leave pursuant to this Federal Act, the Maternity Protection Act or similar Austrian legislation or on the basis of similar legislation of an EEA member state on 1 July 2004; part-time employment can only be commenced or the work schedule can only be changed pursuant to the Federal Act, Federal Law Gazette I no. 64/2004, after the end of parental leave at the earliest;

2. father (adoptive or foster father), if he or the child’s mother (adoptive or foster mother) is part-time employed pursuant to this Federal Act, the MSchG or similar Austrian legislation or on the basis of similar legislation of an EEA member state on 1 July 2004; part-time employment can only be commenced or the work schedule can only be changed pursuant to the Federal Act, Federal Law Gazette I no. 64/2004, after the expiry of the initially agreed period of part-time employment at the earliest;

3. father, if the child’s mother is prohibited from working pursuant to Section 5 Paras. 1 and 2 MSchG, similar Austrian legislation or on the basis of similar legislation of an EEA member state on 1 July 2004;

4. father, if the child’s mother is on paid annual leave on 1 July 2004 subsequent to the period set out under Section 5 Paras. 1 and 2 MSchG, similar Austrian legislation or on the basis of similar legislation of an EEA member state or if she is prevented from work due to illness or an accident on said date and has already requested parental leave or part-time employment in accordance with MSchG, similar Austrian legislation or on the basis of similar legislation of an EEA member state; part-time employment can only be commenced or the work schedule can only be changed pursuant to the Federal Act, Federal Law Gazette I no. 64/2004, after the end of parental leave or after the expiry of the initially agreed period of part-time employment at the earliest.

(12) Section 7a as amended by the Federal Act, Federal Law Gazette I no. 58/2010, shall enter into force on 1 August 2010.

**Articles II – XVII (amendments to other legal provisions)**

**Article XVIII**

**Entry into force**

(1) Articles I to IV, VI to XVI of this Federal Act shall enter into force on 1 January 1990.

(2) Art. V of this Federal Act shall become effective for the executory laws of the Laender on the day of promulgation. The executory laws of the Laender shall be enacted within six months from the day following promulgation.

(3) Fathers, adoptive fathers or foster fathers shall be entitled to parental leave pursuant to Art. I only if the child for whose care the parental leave is taken was born after 31 December 1989.
(4) Fathers, adoptive fathers or foster fathers shall be entitled to parental leave pay pursuant to Art. VI or VIII only if the child for whose care the parental leave pay has been granted was born after 31 December 1989.

Article XIX
Execution

(1) Art. I of this Federal Act shall be executed by the following:
1. for employment relationships with the Federal Government, the Federal Government; if, however, the sphere of responsibility of only one minister is concerned, the respective minister;
2. a) for employment relationships of teachers at public compulsory schools (Art. 14 Para. 2 B-VG)
   and
   b) for employment relationships of teachers at public agricultural and forestry occupational schools and medium-level secondary agricultural and forestry colleges and educators at public school boarding houses that are either exclusively or mainly designated for students of public agricultural and forestry occupational schools and medium-level secondary agricultural and forestry colleges (Art. 14a Para. 3 B-VG), the respective Austrian state (Land);
3. regarding exemption from stamp duty (Section 4 Para. 2), the Federal Minister of Finance,
4. with regard to all other provisions, the Federal Minister for Labour and Social Affairs, with regard to exemption from Federal administration fees in agreement with the Federal Minister of Finance.

(2) Art. XVII (ASVG transitional provision) shall be executed by the Federal Minister for Labour and Social Affairs.

(3) The Federal Minister for Labour and Social Affairs shall protect the rights concerning Art. V of this Federal Act appertaining to the Federal Government pursuant to Art. 15 Para. 8 B-VG.