

Collective agreements

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1. Definitions

1.1 What is the definition of the collective agreement in your country?

These are written and published agreements between certain parties, who are entitled by law to conclude these agreements, which have general and abstract provisions with binding impacts on the employment relationship.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

Yes.

There are two big types of collective agreements:

Tariffs – concluded by trade unions and employers association – broad scope

Works council agreements – concluded by works council and the employer – small scope of contents.

2. Please summarize the history of collective agreements in your country.

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

The constitutional right of Freedom to Association and Assembly

The Collective Employment Regulatory Act

3.2 Does a collective agreement have a contractual or statutory status (or both)?

Contractual status but binding impacts to individual employment relationships

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

See 3.1.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

- a) Are collective agreements and covenants subject to superior standards?

Yes, they are subject to binding statutory provisions

- b) Does a hierarchy of levels exist between collective agreements?

Yes. Collective agreements of works councils are subject to superior collective agreements of trade unions, but only to the benefit of the employee

2) Derogations

- a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?

Yes

- b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?

No.

B) Principle of equality: non-discrimination and “equal pay for equal work”

- 1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

No.

- 2) Are collective agreements subject to the principle of equality?

Discrimination regarding sex, age, religion, race, or disabled persons is forbidden.

C) Law and order

- 1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?

Yes, by jurisprudence.

- 2) Is there a distinction between absolute and relative law and order?

Yes.

D) Is there a duty of good faith in collective bargaining?

In some aspects.

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

- 1) Are collective agreements allowed to abridge rights that employees have been given by law?

Only in certain cases, when this is provided by the statute.

- 2) May the law itself annex a collective agreement?

Usually it does not.

- 3) May a law delegate some of its powers to a collective agreement?

Yes.

B) Collective agreements and regulations

- 1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Yes.

- 2) Are some collective agreements subject to approval by ministerial order?

No.

C) Collective agreements and customs

- 1) Does a collective agreement challenge custom when its object is the same?

Yes.

- 2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

Yes, under certain conditions.

- 3) Have you something else to say about this point?

E) Collective agreements and the labour contract

- 1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

No, only if there is a provision in the collective agreement, which renders a permission for this.

- 2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

It remains independent.

- 3) May a new collective agreement modify the contract of employment?

Collective agreements are not regarded to be parts of the contract of employment, therefore it does not modify the contract, but if the provision of the new collective agreement are more favourable than certain parts of the contract, than the clauses of the collective agreements are valid for the employment relationship and the contractual clause is void..

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

Regarding tariffs there usually is one level of bargaining – the branch.

Regarding works council agreements, which only may be concluded in certain aspects there are different levels.

4.1.2 How are they related?

The different levels of bargaining regarding works council agreements are distinguished by the different competences of the different levels of works council.

4.1.3 Is collective bargaining freely decided or mandatory?

Regarding tariffs is freely decided. Regarding works council its mandatory in certain aspects, for instance if parts of the enterprises are shut down and the works council demand a social works council agreements granting additional benefits for dismissed employees.

4.1.4 What subjects may collective bargaining include?

Tariffs - all rights and duties arising from employment relationship, Works council agreements - only certain aspect, enumerated in the statute or in a tariff.

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

(1) Only unions (or their representatives)?

Tariffs – trade unions

(2) Also the employees, or work-council, or workforce delegates?

Works- council agreements – works council

(3) Other responses?

No

b) Must the parties meet a condition of representativity?

Yes

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

In Austria there is only one umbrella trade union

d) Does a right of opposition exist?

See c.

4.2.2 Formal requirements

a) Must collective agreements be made in writing? Yes.

b) Must a notice be given? Yes.

c) Must collective agreements be registered? Yes.

5. The enforcement of collective agreements

5.1. Scope of collective agreements

5.1.1. Geographic area

- a) National, regional, local? Different.
- b) International? Yes, if Austrian labour law has to be applied.

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

All.

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

Yes, if there are several collective agreements, which could be applied, because an employers is working in businesses of different branches.

5.2.2 What about the mandatory application of “extended” collective agreements?

Under certain conditions the application of tariffs can be extended to similar employment relationships, by the decision of a specialized authority.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

By the rules for the application of the collective agreement.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

It depends on the organisation of the enterprise of the employer. If there are several collective agreements, which could be applied, because an employer is working in businesses of different branches this different activities are not separated in different units then the main activity of the business is the decisive criterion. If there exist different units then the different collective agreements have to be applied accordingly to the businesses of the different units.

5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?

Usually they are enforceable after the signing is published.

5.3.2 Do collective agreements apply automatically?

Yes.

5.3.3 Are collective agreements binding (imperative)?

Yes.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

The parties of the tariff can choose.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

No.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts? Sometimes
- Form of the contract: in writing; compulsory mentions? No
- Various clauses
 - Covenant not to compete? Sometimes
 - Compensation (financial) for covenant not to compete? Sometimes
 - Probationary period? Sometimes

6.2.3 Minimum wages?

Usually

6.2.4 Classification and career of staff members?

Usually

6.2.5 Hours of work

- On-call time and hours of “equivalence”?
- Vacation? There exist statutory provisions. Only some “formal” aspects may be regulated by works councils
- Overtime and fixed wages? Sometime
- Compensatory rest? Sometimes
- Part-time work? Sometimes
- Minimum rest time and maximum work time? In most aspects determined by statutory provisions

6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment? In most aspects determined by statutory provisions
- Guaranteed resources? In most aspects determined by statutory provisions
- Job security? Sometimes

6.2.7 Discipline

Sometimes

6.2.8 Vocational training?

Sometimes

6.2.9 Follow-up of the agreement?

Sometimes

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

Sometimes there are provisions in a collective agreement, which constitute a kind of joint board. Also there exists a specialized authority, which can give an expert opinion on the interpretation, but it is not binding for labour courts

7.1.2 Other bodies or organizations?

No.

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

Usually not.

b) Can it be retroactive?

If it is done by a written and published collective agreements - Yes

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

Yes

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

Usually not

7.2.2 Which body or authority ascertains violations?

The courts

7.2.3 What are the civil remedies?

a) Individual claims?

Yes

b) Collective lawsuits?

In labour disputes we have got two different forms of procedures which may be addressed as "collective (class) actions".

a. A works council/employer can file a claim for a declaratory judgement of rights or legal action

b. Association able to be partner of a collective agreement can apply to the Supreme Court for a declaratory decision.

In both cases this must be relevant for a minimum number of 3 employees

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

See 7.2.3. Of course also every employee may claim his rights himself.

- 7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

Labour courts.

- 7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

Every labour court has to be furnished with every collective agreement.

8. Altering and challenging of collective agreements

8.1. Cases and procedures

- 8.1.1 Do procedures exist for the review and termination of collective agreements?

For tariffs there exist no legal procedures. Such procedures only exist regarding some kinds of works council agreements.

- 8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

Works council agreements do not change.

Tariffs may change if there are other tariffs, which have to be applied on the business of the new employer. But there exist statutory provisions, which ensure, that for instance minimum wages and protections against dismissals given by the old tariff still have to be applied.

- 8.1.3 What happens before and during the time of expiration of the agreement?

Bargaining.

- 8.1.4 What is the procedure for substituting a collective agreement with another one?

No special procedure.

- 8.2 Can employees retain vested or established rights (“droits acquis”) in case of termination of collective agreements?

They become part of the individual contract, until a new collective agreement has to be applied or another individual contract is concluded.

9. Conclusions

- 9.1 Is there a policy promoting collective bargaining and contractual collective law?

Yes.

- 9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

No general problems.

- 9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

The connection between law and collective agreements operates in favour of employees.

- 9.4 Are there any additional conclusions or problems you want to mention?

No.