



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

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| Country: | Austria |
| Title: | Parental Leave Bonus |
| Date: | 18 March 2019 |
| Expert: | Martina Thomasberger |
| Context | |
| Issue at stake: | Paternity Leave, Work-Life-Balance for Parents and Carers |
| Grounds of discrimination: | Sex, Gender, Sexual orientation |
| Field of application: | Employment, Parental leave, Pregnancy and maternity |
| Source: | Policy development, Legislation, National court decision |
| Applicable law: | Parental Leave Bonus (<i>Familienzeitbonusgesetz, FamZeitbG</i>) ¹ |

Content

Case law: Austrian legislation on family benefits largely relies on financial allowances for parents. Almost all amounts of allowances are fixed by legislation (except the income related model of the Small Children's Benefit which grants a variable benefit according to earnings previous to the birth of a child between EUR 33,88 and EUR 66 *per diem*). The benefit amounts are not regularly adapted for inflation in contrast to social security benefits. The Small Children's allowance (*Kinderbetreuungsgeld*) is structured as a lump sum (EUR 12 337 overall) that parents can receive in *per diem* amounts of between EUR 33,88 and EUR 14,50 according to the duration they have requested (between 365 and 851 days for one parent). Additional *per diems* are reserved for the second parent on a take it or leave it basis (91 to 212 days, with a minimal duration of at least 61 days). The allowance generally includes coverage in the statutory health insurance free of contributions. Parents who divide their allowances evenly between themselves are entitled to additional EUR 500 at the end of the allowance period. Parents have to share the same household with the children for whom they receive the allowance.

Before this legal background, legislation was passed in March of 2017, which addressed fathers of new born babies and female partners in same sex partnerships. The newly added Bonus for Family Time Act (*Familienzeitbonusgesetz, FamzBG*) gives fathers the possibility to negotiate between 28 and 31 days of unpaid paternity leave with their employers and to draw EUR 700 (including coverage in the statutory health insurance) as a basic allowance. The amount of this benefit would however be deducted from the amount of a possible later benefit draw. The legislator views this to be in alignment with the general lump sum model of the benefit.

In 2018, the take up rate of Family Time and the related Bonus started to rise, and related problems started to show in practice. Fathers who were not able to reach an agreement

¹ Familienzeitbonusgesetz, BGBl I 53/2016, <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20009586/FamZeitbG%2c%20Fassung%20vom%2004.03.2019.pdf>, accessed 04.03.2019.

about the unpaid leave period with their employers made complaints that the necessity to negotiate a paternity leave period was unfavourable in comparison to the legal structure of maternity leave periods under Austrian legislation (which is mandatory for both employers and employees).

In practice the health insurance authorities at the directive of the responsible Federal Ministry for Youth and Family denied the Bonus to several fathers because their babies had to stay in hospital for a couple of days longer than expected. The reasoning behind these decisions was that the father could not establish a common household with the newly born baby during the admission period and therefore not draw the Bonus for the legally required periods.

Decision of the court: Early in 2019, the Supreme Court issued a verdict that upheld the interpretation that fathers (and female same-sex partners) can establish a shared household with their new born baby only after the hospital admission has ended, thereby denying the Bonus to a number of fathers.²

Key points of analysis: These events resulted in a political discussion concerning the future structure for paternity leave legislation and related benefits, which was in part fuelled by the announcement of Vice-Chancellor Heinz-Christian Strache of the Freedom Party (*Freiheitliche Partei Österreichs, FPÖ*) to take a paternity leave period for his new born son. Trade unions and the opposition parties, especially the Social Democratic Party (*Sozialdemokratische Partei Österreichs, SPÖ*), insisted on a change of rules that would not place fathers at a disadvantage. The competent Minister for Youth and Family from the conservative People's Party (*Österreichische Volkspartei, ÖVP*) stated that employers should not be burdened with additional statutory leave periods for fathers. She announced however that an evaluation process of current practice problems would be started.

These discussions and legal requirements form the legal and political backdrop before which the implementation of the coming Directive on work-life balance for parents and carers is going to be discussed in Austria. The current government coalition of conservative and populist right-wing parties has announced that implementation processes of European Union legislation will be monitored closely and no "gold-plating" (enhance national implementation legislation above the extent required by a Directive) will take place. Under this aspect, the existing negotiable paternity leave period of 28 to 31 days exceeds the current EU proposal of at least 10 days paternity leave. It does however not transfer a right to paternity leave that would be in any way comparable to the existing rules of maternity leave. It could be argued that this is discriminatory for male employees and for female employees in same-sex partnerships.

² OGH vom 21.11.2018, 10 ObS 109/18d, https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20181120_OGH0002_010OBS00109_18D0000_000/JJT_20181120_OGH0002_010OBS00109_18D0000_000.pdf.