



Anlaufstelle zur
gewerkschaftlichen
Unterstützung
UNDOKumentiert
Arbeitender

POLITICAL DEMANDS

Vienna, September 7, 2015

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Preamble: Equal Rights for all Workers

Immigration and employment laws deny or limit the access of immigrants to the labor market. At present there are 28 different types of residency statuses in Austria, which in most cases limit or deny access to the labor market. The counseling work of the Drop-In Center for Undocumented Workers (UNDOK) has shown that immigrants are thereby forced into the informal sectors of the labor market as well as into pseudo-self employment and are therefore dependent on undocumented work.

Employers of undocumented workers cheat them out of their full wages. There is no minimum wage negotiated through collective bargaining, they must reckon with excessive working hours, employers do not adhere to standards for working hours or workplace safety, there are incidences of sexual and/or physical violence. Companies and employers engage in wage and social dumping by undercutting collective bargaining agreements and successively hollowing out the social welfare system.



1. Whoever Lives in Austria Legally Should be Allowed to Work

The discrimination in access to the labor market leads to an overexploitation of undocumented workers and subsequently also to a weakening of the position of all workers. It is one of the major reasons for the expansion of pseudo-self employment and the unequal treatment of immigrants in the workplace. The experiences of UN DOK underscores that there needs to be a comprehensive simplification of the law.

Therefore we demand:

- The granting of a residency permit for Austria must automatically include unrestricted access to the labor market
- the immediate revocation of the Bartenstein-decree
- unrestricted access to the labor market for asylum seekers after a maximum three-month waiting period
- the goal must be to establish humane terms of employment regardless of residency status

2. Ease the Verifiability of Employment – Reverse the Burden of Proof

In order to prove an existing employment status, employees (who do not have written employment contracts or proper records of wages earned) need, for example, handwritten records of work hours, information about the company or employer in question, evidence, such as photos, text messages with work instructions and the names of witnesses. It is often much more difficult for undocumented colleagues to attain evidence because they are under more pressure because of their extreme exploitation and heightened susceptibility to coercion. Through our counseling experiences we know that it is thus doubly difficult for undocumented workers to prove their employment status.

Therefore we demand, parallel to the Anti-Discrimination Laws and the Right to Challenge the Termination of Employment, the reversal of the burden of proof. That means that as long as an employee makes a convincing case that he/she was employed by a specific employer, this employer must prove the opposite, otherwise the employment status is assumed.



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3. Equalization of Labor Law Statutes of Limitation – Extension of the Statute of Limitations for Labor Law Claims to Three Years

In many fields where undocumented work is performed, the statutes of limitations are very short. Often the statute of limitations for labor law claims is three months, before most workers manage to file a claim. Especially while still employed one cannot reasonably be expected to file for outstanding claims, and it would be particularly risky for undocumented workers. Short statutes of limitations affect workers whether they have papers or not. Our counseling experiences have shown that short statutes of limitations are a significant problem, especially in low-wage sectors where employees lose wages to which they are entitled.

Analogous to the demand of the Chamber of Labor (Arbeiterkammer), we demand that statutes of limitations be at least three years, corresponding to the statute of limitations in the ABGB (Austrian General Civil Code). Furthermore, the statute of limitations should begin at the earliest after the termination of employment.

4. Secure Residency During Labor Law Claims

In order to file a labor and social law claim, undocumented workers must personally make a statement to the state healthcare fund (Krankenkasse) or the courts. This often presents an unsurmountable hurdle for undocumented workers due to their ability to be coerced based on their uncertain residency status. According to EU sanctioning guidelines, non-EU citizens who are exploited by their employers must have the ability to file a labor law claim.

Our experiences show that these obligations have still not yet been implemented in Austria. We therefore demand residency permits for the person making the claim and their relatives at least for the duration of the proceedings of the labor and/or social law claim.



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5. Implementation of the Right to Act as a Party for Workers Who Have Applied for a Work Permit

A worker whose employer must apply for a work permit on his/her behalf is not recognized as a party in the proceedings for the issuance of a work permit according to the Ausländerbeschäftigungsgesetz (Act Governing the Employment of Foreign Nationals).

Our counseling experiences show that this continually leads to problems. For the workers in question, this often leads to a lack of knowledge about their legal status in the workforce. As a result, some workers unknowingly work without papers or in extreme cases assume they have a work permit due to fraudulent representations by employers.

We demand the implementation of the Right to Act as a Party according to the judicature of the European Court of Human Rights (ECtHR).

6. Abolish the Penalization of Undocumented Workers When Employers Do Not Meet Their Legal Obligations

Workers should not be penalized for the failure of their employers to comply with their legal obligations. The AMS (Public Employment Service Austria) does not grant work permits to workers whose previous employers neglected to get work permits for them, often causing the workers in question to work without papers on multiple occasions. An example is the case of registering to and unsubscribing from the state healthcare fund if the employer has not applied for a work permit for his/her employee. Often the workers themselves are not aware of what is happening. It is extremely necessary to rectify the current situation.

Members/Partners



Arbeit
ohne Papiere ...

Johann-Böhm-Platz 1, 1020 Wien
ÖGB-Catamaran, Lift D, 1. Stock, Raum 1913
Tel.: +43 (0)1 534 44 -390 40
office@undok.at – www.undok.at

Öffnungszeiten: Mo 9:00–12:00 + Mi 15:00–18:00
Termine außerhalb der Öffnungszeiten nach Vereinbarung