

European (& the GCC) Employment Law Update

Jurisdiction: Austria
Date: May 2019

Impact date	Development	Impact
22 January 2019	<p><i>ECJ C-193/17</i></p> <p>The former Austrian provision according to which only employees that are members of the Evangelical Churches AB and HB, the Old Catholic Church and the Evangelical Methodist Church are entitled to a public holiday on Good Friday and premiums for work provided on Good Friday has been qualified as being discriminatory.</p> <p>All Austrian employees are now entitled to take one of the 25 statutorily granted leave days as a “personal holiday” once a year.</p>	<p>An Austrian employee filed an action against his employer claiming that he had been discriminated against on the grounds of his religion because he had not been paid premiums for services provided on Good Friday. Under the old Austrian provisions, that remuneration was payable only to members of specific religions (in particular Protestant) as Good Friday was not considered a public holiday for other employees.</p> <p>ECJ ruled that national legislation under which Good Friday is a holiday only for employees belonging to some Christian churches and only those employees who are called upon to work on that holiday are entitled to additional remuneration for the work carried out constitutes direct discrimination on religious grounds. It has been decided that as long as Austria has not amended its according legislation, an employer is obliged to grant every employee the right to a holiday on Good Friday, provided that they have previously approached the employer with an according request.</p> <p>The Austrian legislator has reacted to this decision by no longer qualifying Good Friday as a holiday. Instead, all employees have the right to unilaterally take one of the statutorily granted 25 leave days per year as “personal holiday”. This new provision deviates from the principle that holiday consumption always requires an agreement between the employer and the employee. The employer must be informed only about this personal holiday at least three months in advance in writing. If the employee is requested to work on such personal holiday, additional remuneration is due at the ratio of 1:1 (i.e. a total of 1:2).</p>