

August 2024

# FORUM NEWS

Austria | COVID-19

## New jurisdiction regarding COVID-19 as an accident at work

In Austria there is now a supreme court decision dealing with the question whether infectious diseases (including COVID-19) can occur in the context of an accident at work. In principle, the supreme court negates this: In the case of a “simple infection” an infectious disease cannot be recognized as an accident at work. This is only possible if the infection was caused by an accidental event.



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The Austrian Supreme Court has ruled on whether an infectious disease can occur in the context of an accident at work in addition to an occupational disease. The case concerned an infection with COVID-19.

In Austria, occupational diseases are listed in Appendix 1 to the General Social Insurance Act. The list includes among others the occupational disease “infectious diseases”, but restricts its application to certain kinds of companies. Only in these companies an infectious disease can be recognized as an occupational disease.

When it comes to the question of whether an infectious disease can also be recognized as an accident at work, the law in Austria leaves room for interpretation and so law experts and the jurisdiction have so far disagreed – particularly concerning COVID 19 – on whether this should be possible.

In the current decision (10 ObS 85/23g) the Supreme Court now comes to the conclusion that an infectious disease (and thus also COVID-19) can in principle only be recognized as an occupational disease. In the case of a “simple infection” the recognition as an accident at work isn’t possible. The only exceptions are cases in which the infection is due to an accidental event (such as an insect bite, bite, injection with infected needle, etc.).

The Supreme Court justifies this, for example, with the following argument: It is typical for occupational diseases that the illness is caused by long-term harmful impacts. In the case of infectious diseases, the infection process generally happens abruptly, which is more a characteristic of an accident. However, the legislator has nevertheless classified infectious diseases as occupational diseases. This can only be understood as meaning that the legislator intended to treat them only as an occupational disease and intended to cover them only under the conditions mentioned in the list of occupational diseases (therefore only in certain companies).

Furthermore, a health disorder can have various causes and, especially in the case of infectious diseases, a wide variety of sources of infection and transmission routes can be considered, which can’t be determined with certainty in retrospect or traced back to professional activity. The purpose of the occupational disease “infectious diseases” is to grant accident insurance cover only to those persons who are exposed to a particular risk of infection due to their employment in certain companies. The obvious intention of the legislature was therefore to protect infectious diseases only as occupational diseases. ●

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