

WORKS CONSTITUTION AND WORKS COUNCIL

GENERAL ASPECTS

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1. Structure of the Works Council
2. Election, Tenure of Office and Legal Status of Works Council
3. Costs and other Expenses
4. General Principles of Collaboration
5. General Duties of Works Council
6. Co-Determination / Participation in Social and HR Matters

1. Structure of the Works Council

Works Council for Each Business Operation (Einzelbetriebsrat)

- ◆ Related to the employees of each business operation
- ◆ Independent of corporate structure of the company

Joint Works Council (Gesamtbetriebsrat)

- ◆ Representatives of the Works Councils of business operations
- ◆ Statutory Responsibilities, Sec. 50 para. 1 BetrVG

Group Works Council (Konzernbetriebsrat)

- ◆ Statutory Responsibilities for matters of the whole group, Sec. 58 para 1 BetrVG

Economic (affairs) Committee (Wirtschaftsausschuss)

Statutory Basis: Betriebsverfassungsgesetz (BetrVG) = Works Council Constitution Act



2. Election, Tenure of Office and Legal Status of Works Council

- ◆ Requirement: Business Operation with at least 5 employees and at least 3 employees eligible for election
- ◆ Every 4 years between 01 March – 31 May: Next election period = 2014
- ◆ In addition in situations according to Sec. 13 Abs. 2 Nr. 1 - 6 BetrVG, e.g. in cases of companies without a Works Council
- ◆ For small entities: Simplified election procedure
- ◆ In cases of violation of fundamental provisions regarding the elections: Defeasibility or invalidity of the election
- ◆ Costs of the elections: Employer according to Sec. 20 para. 3 BetrVG
- ◆ Protection of the elections: Employer may not influence the elections at all → criminal offense according to Sec. 119 BetrVG
- ◆ Tenure of Office: in general 4 years

2. Legal Status of Works Council

- **Honorary Office** = no special pay for Works Council members
- **Release from work** (either partly or full) for fulfilling the tasks as Works Council
- **Special protection against dismissal with notice** (*ordentliche Kündigung*) according to Sec. 15 KSchG
- **Approval of any extraordinary dismissal** (*außerordentliche Kündigung*) by the other members of the Works Council according to Sec. 103 BetrVG; if refused: substitution of such approval by the relevant Labor Court necessary
- Protection of income and position / work
- **Number of members of Works Council:** Depends on the number of employees in the business operation – between 1 and more than 35; Sec. 9 BetrVG.

Reasons for the Establishment of a Works Council in Practice

- Merger & Acquisition → often foreign investors with less or none knowledge of German Labor Law
- Change at the management level
- Economic or financial crisis of the company and according measurements of restructuring and HR reduction
- Company in the focus of Unions, especially companies of public interest
- Missing communication with the employees
- Hiring employees with experience as members of Works Councils
- Further reasons?

3. Costs and other Expenses

- Costs and expenses of Works Council's activities: **Employer**
- Requirement: Costs and expenses must be **necessary from the standpoint of a third party**
- All **necessary means for the Work Council meetings**, like room, telephone, paper etc.) must be provided by Employer, Sec. 40 para. 2 BetrVG
- Works Council meetings **during working time**
- In addition: Computer, Internet, legal publications, statutes – all if necessary
- In complex matters: Support of the Works Council by a **lawyer** – fees to be paid by Employer
- Costs for **trainings and further special education**

4. General Principles of Collaboration

- **Trustful cooperation** between Works Council and Employer/ Management, Sec. 2 para. 1 BetrVG
- **Cooperation instead of confrontation**
- Duty to **meet regularly on a monthly basis**, Sec. 74 para. 1 BetrVG
- Duty to **negotiate in order to settle disputes**, Sec. 74 para. 1 BetrVG
- **Prohibition of strike** initiated by the Works Council, Sec. 74 para. 2 BetrVG
- Duty of **confidentiality** regarding business secrets

5. General Duties of Works Council

- Check of the consideration of all relevant law in favor of the employees, Sec. 80 para. 1 No. 1 BetrVG
 - Support of employment in the company, Sec. 80 para. 1 No. 8 BetrVG
 - Equal treatment of men and women, Sec. 80 para. 1 No. 2a BetrVG
 - Protection of disabled employees, Sec. 80 para. 1 No. 4 BetrVG
 - Compatibility of family and profession, Sec. 80 para. 1 No. 2b BetrVG
 - Support of elder employees, Sec. 80 para. 1 No. 6 BetrVG
 - and further duties according to Sec. 80 para. 1 BetrVG
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- Works Council can claim timely and complete information by the Employer, Sec. 80 para. 2 BetrVG

5. Co-Determination / Participation in Social and HR Matters

Information

Duty of Employer to inform the Works Council, e.g. Sec. 99 para. 1 BetrVG

Hearing

Employer has to consult the Works Council and has to consider its opinion, e.g. Sec. 102 BetrVG

Negotiation

Employer and Works Council have to negotiate the matter, e.g. Sec. 111 BetrVG

Approval

Employer needs the approval by the Works Council in order to continue with the intended activity, but Works Council can only refuse for certain legal reasons, e.g. Sec. 99 para. 1 BetrVG

(Enforceable) Co-Determination

Employer cannot continue at all without the approval of the works council, in cases of dispute the „Einigungsstelle“ (arbitration committee) has to decide, e.g. Sec. 87 para. 1 BetrVG

6. Co-Determination / Participation in Social and HR Matters

- Negotiation with the Works Council in cases of **restructuring the working place** (building, technical equipment etc.), Sec. 90 BetrVG
- Information of the Works Council regarding **general HR strategies**, Sec. 92 BetrVG
- Co-Determination regarding **personnel questionnaires or performance guidelines**, Sec. 94, 95 BetrVG
- Approval in cases of **hiring or transfer of employees**, Sec. 99 BetrVG → if Works Council refuses the approval, substitution by the relevant Labor Court necessary
- Hearing of Works Council in cases of **dismissal of employees**, Sec. 102 BetrVG

6. Co-Determination / Participation in Social and HR Matters

- Co-Determination in social matters, Sec. 87 BetrVG:
- Work rules
 - Working time, breaks
 - Overtime work
 - Time, place and manner of salary payment
 - General rules for vacation
 - Installation of technical means which could control the employees
 - Provisions to avoid accident at work
 - Allocation and termination of housing space for employees
 - General rules for remuneration
 - General rules for inventions

In cases of dispute – final decision by „*Einigungsstelle*“ (arbitration committee).

Vielen Dank für Ihre Aufmerksamkeit

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