



The 10 Most Important Facts for Employers About Works Councils and Their Rights in Germany

A GUIDELINE FOR DEALING WITH WORKS COUNCILS
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1. ESTABLISHMENT OF A WORKS COUNCIL

A works council can be elected in Germany in operations normally having at least five employees. Whether a works council should be elected in an operation is decided exclusively by the employees. Preventing a works council election in Germany is punishable under criminal law. The size of the works council to be elected depends on the number of employees in the company and can consist of up to 35 members.

If there are multiple operations in one company, a joint works council, or a group works council in a corporate group, can be installed.

2. WORKS COUNCIL'S TERM OF OFFICE

In normal cases, a works council's term of office is four years. The works council is elected at regular intervals every four years by the employees in the operation during the time period from 1 March up to and including 31 May. If a works council does not exist, elections can also take place outside of this time period.

3. WHO DOES THE WORKS COUNCIL REPRESENT?

The works council represents all employees. In contrast, the works council does not represent managing directors, managing boards, or senior staff members.

4. SPECIAL PROTECTION AGAINST DISMISSAL

Members of the works council have special protection against dismissal. This means that their employment relationships can only be terminated for an important reason and with the consent of the works council committee. If the works council committee does not consent to the intended dismissal of the works council member, the employer is obligated to replace the consent of the works council with a court decision. These types of proceedings are very long and costly.

Due to this special protection against dismissal, it is claimed that works councils in Germany are actually "undismissable".

The special protection against dismissal exists during the works council's term of office over four years. If a works council member is not re-elected, a one year subsequent period of special protection additionally applies. This means that also during this subsequent period, a dismissal is only possible for an important reason.

5. WORKS COUNCIL MEETINGS, WORKS COUNCIL ASSEMBLIES

As far as considered necessary by the works council, the works council is entitled to hold works council meetings during which topics of concern for the works council are discussed. Such meetings are generally conducted once a week. All members of the works council attend these meetings. The meetings are not open to the public and take place during working hours.

Additionally, the works council is obligated to hold a so-called works council assembly for all employees in the operation during working hours four times per calendar year. If it is necessary to close the operation in order to hold this works council assembly, the works council can enforce such a closure.

During the works council assembly, the works council has the opportunity to discuss with all employees topics relating to social policy, environmental policy and economics as well as topics of concern for the works council and the employees. The trade union represented in the operation likewise has a right to attend such assemblies and can act as an advisor at these assemblies.

6. COSTS OF THE WORKS COUNCIL

The employer alone bears the costs resulting from the work of the works council. In this respect, the works council does not have any assets or funds.

Additionally, the employer must provide the necessary rooms, material resources, information and communications technology, and office personnel for the works council meetings, office hours, and day-to-day business. If the works council considers the legal advice of a lawyer to be necessary, the employer must also bear these costs. The same applies for all legal disputes with the works council in court.

However, that is not enough: independent thereof, the employer is obligated to pay the works council members the customary remuneration during the time in which the works council work is completed.

Due to the fact that works council members must receive comprehensive training on their rights and obligations, the employer is also obligated to pay the necessary training expenses. Such expenses are not insignificant because each member is entitled to comprehensive training on works council constitution law.

7. INFORMATION, CONSULTATION, AND CODETERMINATION RIGHTS

With regards to the rights of the works council, a differentiation is made between information, consultation, and codetermination rights.

With regards to social matters, the works council has a comprehensive codetermination right. Comprehensive means that the employer is not authorised to implement measures in the following areas if a mutual agreement in this regard has not been previously reached with the works council. If an agreement cannot be reached on a social matter, a so-called arbitration committee makes the decision. The costs for an arbitration committee are significant so that German employers generally try to avoid the necessity of such an arbitration committee.

Social matters for which the works council has a codetermination right are:

- Company rules: e.g. code of conduct, smoking bans, dress codes, name tags
- Beginning and end of the daily working hours including breaks
- Temporary reduction or extension of working hours, e.g. overtime
- Establishing general policies on holiday
- Introduction and application of technical equipment and software
- Issues concerning the company wage structure, in particular policies on distributing bonuses, premiums and other performance-related benefits.

Due to the comprehensive codetermination right for social matters, the employer is very limited in its ability to make free entrepreneurial decisions.

If the employer implements measures on social matters without the consent of the works council, the works council can prevent these measures within the scope of an interim injunction.

8. CODETERMINATION RIGHT FOR HIRING, TRANSFERS, AND DISMISSALS

The employer is obligated to inform the works council before hiring or transferring an employee and submit the necessary documents to the works council. If the works council refuses to give its consent to the aforementioned personnel measures in accordance with the statutory requirements, the employer is obligated to obtain such consent to the personnel measures in court. This can be not only very costly but also very time consuming.

In Germany, the works council must be consulted before each dismissal. The employer must inform the works council of all reasons for the dismissal. A dismissal that is made without consulting the works council, or not properly consulting it, is invalid.

Due to the fact that high standards are placed on properly consulting the works council within the scope of a dismissal, the employer must be extremely careful when preparing the information letter for the works council.

9. RESTRUCTURING: RECONCILIATION OF INTERESTS AND SOCIAL PLANS

If the employer is planning on restructuring in Germany, in the case of operational changes, the employer is obligated to negotiate a reconciliation of interests before implementing the operational changes. Operational changes include, for example, a closure, relocation of operations, or fundamental changes to the company organisation. The reconciliation of interests regulates the individual personnel measures, which should be implemented within the scope of the operational changes.

Additionally, the employer must agree on a social plan. The social plan alleviates the economic disadvantages of the employees caused by the operational changes.

If the employer cannot agree on a reconciliation of interests and social plan with the works council, the arbitration committee must be convened.

10. SANCTIONS AGAINST THE EMPLOYER

Works councils have a particularly high amount of protection. The employer should therefore, at all costs, refrain from obstructing, disadvantaging or promoting the work of the works council. If an employer violates this principle, such violations are penalised by fines or imprisonment.

If the employer violates other rights of the works council, the works council has many opportunities to take legal action against the employer. Naturally, the employer bears the costs in this regard!

Should you have any further questions, please feel free to contact our Squire Sanders Hammonds Employment Team at any time.

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