

30th November 2016

Why do we need a works council?

Co-determination and democratic participation are the foundation of our society and work is an essential part of life. Representation of the interests of employees inside of companies is normally provided by a works council. As a legal institution, it is endowed with many rights and obligations.

Employees, by choosing to establish a Betriebsrat, are entitled to extensive rights which they should not waive.

As mentioned above a works council has many rights and obligations. Depending on the company and the needs of the employees, a works council can address many issues. As an example, here are a few.

The Works Council:

- monitors compliance with applicable laws, regulations, occupational health and safety regulations, company agreements and collective bargaining agreements,
- has the right to co-determination regarding questions concerning the time and place for and the form of payment of salary,
- has the right to co-determination regarding rules on working time; for example, to flexitime, timesheets and overtime,
- must be involved in the establishment of general principles related to leave and vacation plans,
- advises management on changes to the operation of the institution and informs the workforce,
- serves as a focal point for complaints by employees,
- promotes the reconciliation of work and family, the integration of colleagues with disabilities, and advocates for equality and against (structural) discrimination,
- has the right to co-determination regarding recruitment, transfers and regrouping
- must be involved in dismissals.

As a democratically legitimate representation of the interests of the employees, the works council provides equal opportunities and transparency. General regulations can in principle be dealt with in favor of every worker (so-called "favorable" principle).

We don't have a Betriebsrat - FAQs:

1. What is the relationship with the employer?

The works council and the employer hold discussions within the framework of regular monthly discussions § 4 BetrVG. It is subject to the obligation of peace, § 74 para. 2

BetrVG. The principle of trustworthy cooperation for the benefit of the employees and the company applies to works council work: " The employer and the works council shall work together in a spirit of mutual trust having regard to the applicable collective agreements and in co-operation with the unions and employers' associations represented in the establishment, taking in consideration the valid collective labour agreements, for the good of the employees and of the establishment." (§ 2 para. 1 BetrVG)

2. Do we have to take over the duties of the works council members?

No, the works council is released from duties during the times of works council work, the employer must ensure that staff levels are adequate. The work of the works council takes precedence over regular work. As a rule, the employer will be provided with a schedule of works council duties, so that the increase in the hours can be planned.

3. What is the difference between a Betriebsrat and a "free employee representative system"?

The works council has clearly defined rights and can, if necessary, refer issues to court. Works councils have special protection against dismissals and disadvantages. The potential for advancement is not hindered. A "free employee representative system" is a body established by the management. It has no legally-guaranteed rights and no protection from reprisals.

4. Is it worth the effort of voting?

Knowledge is power: Only a works council can provide the necessary knowledge and information to pass on to the employees through its legal right to training and its general consultation and teaching rights. Furthermore, enforceable co-determination rights are the only way to negotiate with the employer on an equal footing.

5. Can the works council go over the heads?

No, the works council represents the interests of the employees. The employees must be taken into account at every company meeting. If a scheme for a single employee is worse than in the employment contract, the more favorable one applies ("favorable" principle).

6. How long is the works council in the office?

The term of office of works councils is four years. The elections are held in conjunction with German nationwide election from 01 March to 31 May. The next regular elections are from March to May 2018. If there is still no works council in the company, a works council can be established at any time.

7. Can the employer take action against me?

No, § 15 of the Termination Protection Act (KSchG) provides for: members of the works council are subject to special protection. This shall be one year beyond the term of office. Also for electoral candidate and electoral board members, there is a special protection against dismissal in place six months beyond the election.

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