

## Brief Instructions

### for the Introduction and Holding of a Works Council Election

At the company there is currently no works council which represents the interests of the employees. A works council is now to be elected. These brief instructions provide an initial overview of **at which works** the election of a works council is possible and **how the election is held**. Detailed information is to be found in the election guidelines for the normal and the simplified election process. These also contain a number of sample texts and checklists which facilitate the holding of the works council elections.

#### 1. Where can a works council be elected?

The Works Council Constitution Act provides for the formation of works councils at **works** where there are at least **five permanent employees who are entitled to vote**. **Three** of them must be **electable**.

**Works** are to be distinguished from companies. A company (e.g. a limited liability company or public limited company) can have one or more works. There can therefore be several works councils at a company, which then send members to a general works council. The works is a combination of employees and technology which is controlled organisationally by a uniform management entity. This management entity must possess the important decision-making powers in personnel (appointment, transfer, dismissal) and social matters (regulations, working time, holiday planning etc.).

All employees at the works who have reached their 18th birthday on the day of the election are **actively entitled to vote** irrespective of their nationality. The individuals entitled to vote also include part-time employees. Temporary employees are also entitled to vote if they are deployed at the works for longer than three months or deployment for this length of time is planned. Individuals who are not entitled to vote are executives who perform corporate tasks.

**Electable** individuals are all employees - irrespective of their nationality - who are actively entitled to vote and who have been employed at the works for at least six months. The employment periods at another works of the same company or another company within the group are also credited.

#### 2. How are works council elections held?

The works council election is always prepared and held by an **electoral board**. If a works council already exists, it appoints the electoral board. If there is currently no works council, the

electoral board can be appointed by the general works council or the group works council. If there is no general works council or group works council, or if one is not active, the electoral board at a works without a works council is elected at a works meeting by the majority of the employees present. If it is not possible to appoint an electoral board at the works meeting, three employees who are entitled to vote or a trade union represented at the works can apply to the Labour Court for the appointment of an electoral board.

The **type of election process** and the individual steps required depend on how many employees there are who are entitled to vote at the works. If as a rule there are **between 5 and 50 employees who are entitled to vote** at a works, the **simplified election process** applies.

If there are **more than 50 employees who are entitled to vote** at the works, the **normal election process** applies as a rule. At works with 51 to 100 employees who are entitled to vote it is possible for the electoral board to agree the holding of a simplified election process with the employer. If there are more than 100 employees who are entitled to vote, only the **normal election process** applies.

The simplified election process is explained under 2.1 below. The normal election process is explained under 2.2.

## **2.1. Procedure of the simplified election process**

In the **simplified election process** a distinction is made between **two versions**: the single-stage and the two-stage process. The two-stage process (2.1.1.) applies if there is no works council in existence and the electoral board is elected at a works meeting. The single-stage process (2.1.2.) applies if the electoral board is appointed by an existing works council or a general works council or group works council.

**2.1.1. Two-stage process:** If the electoral board is to be elected at a works meeting, **two election meetings** are held. At the **first election meeting** the electoral board members and the chairman of the electoral board are elected by the employees. The invitation to participate in this first election meeting can be submitted by three employees who are entitled to vote or a trade union represented at the works. The invitation must comply with certain formalities. At the first election meeting the electoral board draws up a list of voters in which all employees who are entitled to vote are entered separately according to their sex. The documents required for this are provided to the electoral board by the parties submitting the invitation to the election meeting, who have previously requested them from the employer. The electoral board then issues an election announcement. The election announcement contains a good deal of information that is important for the voters. The minimum number of seats for the minority sex must be complied with. Election candidates are proposed during the course of the first election meeting. A candidate proposal may nominate one or more candidates. This is made up of a

declaration of consent by the candidate and declarations of support from 3 employees (if there are not more than 20 employees who are entitled to vote 2 declarations of support are sufficient). The candidate proposal can be submitted in writing or verbally.

One week after the first election meeting the **second election meeting for the election of the works council** is held. The works council is elected by means of a secret and direct vote. The electoral board hands out a ballot paper and ballot envelope to the employees who are entitled to vote. The ballot paper lists the candidates in alphabetical order. The employee can place a cross next to as many candidates as there are seats to be allocated. After the crosses have been placed next to the candidates the ballot paper is placed in the ballot envelope and then in the ballot box. If employees are absent on the day of the election, they are to be given the opportunity to submit their vote in writing (postal vote). Employees can apply to submit a subsequent written vote up to three days before the second election meeting. The votes are counted publicly after the election meeting or – if the subsequent submission of written votes has been applied for – at a later time announced beforehand by the electoral board. The candidates who receive the most votes are elected. The minority sex must be taken into account in the distribution of seats. The elected candidates are to be informed immediately.

**2.1.2 Single-stage process:** If the electoral board has been appointed by an existing works council, the general works council or the group works council, it instigates the election immediately after its appointment. To this purpose it first has to draw up the list of voters separately according to the sexes. It then issues an election announcement. The election announcement contains a good deal of information that is important for the voters. Amongst other items this must state that the candidate proposals have to be submitted in writing to the electoral board not later than one week before the date of the election meeting for the election of the works council. The election meeting for the election of the works council takes the same form as that described above under 2.1.1. for the second election meeting for the election of the works council in the two-stage process.

## **2.2. Procedure of the normal election process**

If a **works council** is already in existence it appoints the electoral board and determines the chairman of the electoral board. If the incumbent works council remains inactive, the general works council or the group works council can make the appointment. It is also possible for three employees who are entitled to vote or a trade union represented at the works to apply to the Labour Court for the appointment of the electoral board.

If there has been no works council at the works up to now, the general works council or the group works council can appoint the electoral board and decide on its chairman. If the appointment is not made in this manner, the electoral board is elected by all employees of the works at a works meeting which must be held at the works during working hours. The invitation

to this meeting can be submitted by three employees who are entitled to vote or a trade union represented at the works. If in spite of the invitation the works meeting does not take place, or it does not elect an electoral board, three employees who are entitled to vote or a trade union represented at the works can apply to the Labour Court for the appointment of an electoral board.

The electoral board draws up a **list of voters** in which all employees who are entitled to vote are entered according to their sex. The documents required for this are submitted to the electoral board upon request by the employer. The electoral board then issues an **election announcement**. The election announcement contains a good deal of information that is important for the voters. The minimum number of seats for the minority sex must be taken into account.

Anyone wishing to **run** for the works council must be included in a list of candidates, which is to be submitted to the electoral board within two weeks of the publication of the election announcement. The list of candidates, which may contain one or more election candidates, must be signed by 5% of the employees who are entitled to vote and by at least three individuals who are entitled to vote (supporting signatures). Once the list(s) of candidates has/have been declared valid, it/they is/are published not later than one week before the day of the election.

If at least two lists of candidates are declared to be valid, the employees may only decide in favour of one of the lists in the election (**list voting**). If only one list of candidates has been submitted or found to be valid, the employees can give the individual candidates their vote (**candidate voting**). The employee can then place a cross next to as many candidates as there are seats to be allocated.

On the **day of the election** the works council is elected in a company voting room by means of a secret and direct vote. The electoral board hands out a ballot paper and a ballot envelope to the employees who are entitled to vote. After a cross has been placed next to a list or the individual election candidates, the ballot paper is placed in the ballot envelope and then in the ballot box. If employees are absent on the day of the election, they are to be given the opportunity to submit their vote in writing (postal vote).

The votes are counted openly after the polling station has closed. In the case of a list election the number of seats allocated to the individual candidate lists is determined. The candidates are elected in the order in which they appear on the list and with the number of seats which are allocated to the list. In the case of candidate voting the candidates who have received the most votes are elected, whereby the number of elected candidates of the minority sex must always be taken into account. The elected candidates are informed immediately by the electoral board.

### 3. Election protection and election costs

Works council elections are afforded special legal protection. Anyone who acts as one of three individuals submitting an invitation to an election meeting, anyone applying to the Labour Court as one of three applicants for the nomination of an electoral board, anyone who is a member of the electoral board and anyone running for the works council election enjoys special temporary protection against ordinary dismissal.

The ordinary dismissal of the three **individuals submitting the invitation** or the three **applicants** is not permitted until the result of the election is announced. If no works council election has been held, ordinary notice of dismissal may not be served on them over a period of three months from the time of the invitation or the application to the Labour Court. Only extraordinary dismissal of the individuals submitting the invitation or the applicants is possible in compliance with the strict preconditions for extraordinary dismissals.

The ordinary dismissal of **members of the electoral board** and **election candidates** is also not permitted until the result of the election is announced. Furthermore, members of the electoral board and election candidates enjoy continuing protection against unfair dismissal for a period of six months from the time of the announcement of the election result.

Extraordinary dismissal of the members of the electoral board and election candidates is possible in compliance with the strict preconditions for extraordinary dismissals. Until the announcement of the election result the works council must agree to such extraordinary dismissal of the members of the electoral board and election candidates. The employer can apply to the Labour Court for such agreement if the works council refuses.

The employer is prohibited by law from hindering or influencing the works council elections and may be punished for doing so. No employee may be hindered from exercising his or her active or passive right to vote.

The costs of the works council election are to be borne by the employer.