

Some brief information

on how to launch and carry out an Employees Council election

So far, in the business operation there is no Employees Council that represents the interests of the employees. An Employees Council is now to be elected. These brief notes provide an initial overview of the kinds of business operations in which the election of an Employees Council is possible, as well as showing how the election is conducted. Detailed information can be found in the electoral guidelines as regards both the normal and the simplified electoral procedure. The latter include, in addition, a number of templates and checklists that facilitate the implementation of Employees Council elections.

1. Where can an Employees Council be elected?

The Industrial Constitution Act provides for the establishment of Employees Councils in **business operations employing at least five permanent male or female employees who are eligible to vote. Three** of the latter have to be **eligible for election**.

A distinction has to be made between **operations** and companies. A company (such as a GmbH/limited liability company or an Aktiengesellschaft/public limited company) can consist of one or more business operations. In a certain company, therefore, there may be several Employees Councils, which then send members to a Central Employees Council. The business operation is a combination of employees and technology that is organizationally controlled by a uniform management apparatus. This management apparatus must have essential decision-making powers as regards both human resources (recruitment, transfer, dismissal) and social matters (regulations, working hours, vacation planning, etc.).

All employees, whatever their nationality, who are actively employed in the business operation and will have reached the age of 18 by election day are **eligible to vote**. Inter alia, the number of those eligible to vote will also include part-time employees.

Temporary agency employees are eligible to vote if they have been deployed in the business operation for a period exceeding three months or if their deployment is scheduled to last this period of time. Senior executives carrying out management tasks are not eligible to vote.

All employees, whatever their nationality, who are eligible to vote and have belonged to the business operation for a period of at least six months are **eligible for election**. Periods of employment in another operation of the same company or another company belonging to the same Group will be credited as being part of the above period.

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2. How are Employees Council elections carried out?

The Employees Council election is always prepared and carried out by an **election committee**. If an Employees Council already exists, then the latter appoints the election committee. If an Employees Council does not exist to date, the election committee can be appointed by the Central Employees Council or the Group Employees Council. If there is no Central Employees Council or Group Employees Council, or the latter fails to act, in a business operation having no Employees Council the election committee is to be elected in a business operation assembly by the majority of the employees present. If the appointment of an election committee via a business operation assembly is unsuccessful, three employees who are eligible to vote or a trade union represented in the operation can apply to the industrial court regarding the appointment of an election committee.

The **nature of the electoral process** and the individual steps required depends on how many employees who are eligible to vote are employed in a given business operation. If, as is typical, **between five and 50 employees who are eligible to vote** are employed in a business operation, the **simplified electoral procedure** will apply.

If **more than 50 employees who are eligible to vote** are employed in the operation, the **normal electoral procedure** will usually apply. In business operations with 51 to 100 employees who are eligible to vote, the election committee together with the employer have the option of agreeing the implementation of the simplified electoral procedure. If more than 100 employees who are eligible to vote are employed, the **normal electoral procedure** is the sole procedure applicable.

The simplified electoral procedure is explained under item 2.1 below. The normal electoral procedure is explained under item 2.2.

2.1. Procedure involved in the simplified electoral process

A distinction is to be made between the **two variations** of the **simplified electoral procedure**: single-stage and two-stage procedures. The two-stage procedure (2.1.1.) comes into operation if no Employees Council exists to date and the election committee is elected at a business operation meeting. The single-stage procedure (2.1.2.) applies if the election committee is being appointed by an Employees Council or a Central or Group Employees Council that already exists.

2.1.1. **Two-stage procedure**: if the election committee is to be elected at a business operation meeting, **two electoral assemblies** will be held. In the **first electoral assembly**, the election committee members and the committee's chairperson will be elected by the employees. An

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invitation to attend this first electoral assembly can be issued by three employees who are eligible to vote or by a trade union represented in the business operation concerned. In the invitation, specific formalities are to be complied with. In the first electoral assembly, the election committee creates a list of voters in which all the employees eligible to vote are to be entered, separated according to gender. The election committee will receive the documents necessary for this purpose from those issuing the invitation to the electoral assembly, the latter having requested said documents in advance from the employer. The election committee will then issue an election notice. The election notice contains a great deal of information of importance to the voters. The minimum number of seats to be allotted to the minority gender has to be observed. Election candidates will be proposed in the course of the actual first electoral assembly. A nomination proposal can nominate one or more candidates. It consists of a statement of consent on the part of the candidate and supporting statements on the part of 3 employees (if there are up to 20 employees who are eligible to vote, 2 supporting statements will suffice). The nomination proposal can be submitted either verbally or in writing.

One week after the first electoral assembly, the **second electoral assembly is held for the election of the Employees Council**. The Employees Council is elected in a secret and direct ballot. The election committee hands out a ballot paper and a ballot envelope to each employee who is eligible to vote. The ballot paper contains a list of the candidates in alphabetical order. The employee can put a cross next to as many candidates as there are seats to be allotted. The candidates having been marked with a cross, the ballot paper is placed in the ballot envelope and then deposited in the ballot box. If employees are absent on election day, they are to be given an opportunity to submit their votes in writing (absentee ballot). Employees can apply for the casting of votes in writing on a subsequent date up to three days before the second electoral assembly. The counting of the votes is carried out publicly immediately after the electoral assembly - or if an application has been made for the subsequent casting of votes in writing - at a later point in time, this being announced beforehand by the election committee. The candidates who receive the most votes will be elected. The minority gender is to be taken into consideration when the seats are distributed. The candidates elected are to be informed immediately.

2.1.2 Single-stage procedure: if the election committee has been appointed by the Employees Council, the Central Employees Council or the Group Employees Council already existing, then it shall initiate the election immediately after being appointed. The first thing it has to do to this end is to draw up the list of voters, separated according to gender. It then issues an election notice. The election notice contains a great deal of information of importance to the voters. Inter alia, it has to be stated that the nomination proposals have to be submitted to the election committee in writing no later than one week prior to the date of the electoral assembly relating to the Employees Council election. The electoral assembly for the Employees Council election proceeds exactly as described above, under item 2.1.1., with regard to the second electoral assembly for the Employees Council election following the two-stage procedure.

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2.2. Procedure involved in the simplified electoral process

If an **Employees Council** already exists, the latter will then appoint the election committee and designate the election committee chairperson. If the incumbent Employees Council fails to act, the Central or Group Employees Council can carry out the appointment. Similarly, three employees who are eligible to vote or a trade union represented in the business operation concerned can apply to the industrial court regarding the appointment of the election committee.

If no Employees Council exists in the business operation to date, the Central or Group Employees Council can appoint the election committee and designate the committee's chairperson. If the appointment is not carried out in this way, the election committee will then be elected in a business operation assembly - to be held in all cases during working hours - by all employees of the operation. Invitations to this meeting can be issued by three employees who are eligible to vote or by a trade union represented in the business operation concerned. If the business operation assembly does not come about despite invitations being issued or if it does not elect an election committee, three employees who are eligible to vote or a trade union represented in the operation can apply to the industrial court for the appointment of an election committee.

The election committee will draft a **list of voters** in which all the employees eligible to vote are to be entered, separated according to gender. The election committee will receive the documents necessary for this from the employer if it makes an appropriate request. The election committee will then issue an **election notice**. The election notice contains a great deal of information of importance to the voters. The minimum number of seats to be allotted to the minority gender has to be observed.

A person wishing to stand as a candidate for the Employees Council must be listed in a list of nominations - to be submitted to the election committee within two weeks of the election notice being publicly displayed. The list of nominations, which can contain one or several election candidates, has to be signed by 5% of the employees who are eligible to vote, but by at least three persons who are eligible to vote (supporting signatures). The list(s) of nominations recognized as being valid will be displayed publicly at least one week before election day.

If at least two lists of nominations are found to be valid, when it comes to the election the employees can only opt for one of the lists (**election based on a list**). If only one list of nominations has been either submitted or accepted as being valid, the employees can vote for the individual candidates (election of persons). The employee can then put a cross next to as many candidates as there are seats to be allotted.

On election day, the Employees Council will then be elected in a secret and direct ballot in a

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voting chamber run by the business operation. The election committee hands out a ballot paper and a ballot envelope to each employee who is eligible to vote. After a cross has been put next to a list or next to each of the individual election candidates on the list, the ballot paper is placed in the ballot envelope and then deposited in the ballot box. If employees are absent on election day, they are to be given an opportunity to submit their votes in writing (absentee ballot).

The counting of the votes is carried out publicly following the closure of the polling station. In the election based on a list, the number of seats is ascertained that is attributable to the individual lists of nominations. The candidates are elected in the order in which they are shown on the list, the number elected corresponding to the number of seats allotted to the list. In the election of persons, the candidates receiving the most votes will be elected, it nevertheless being necessary to take the numerical size of the minority gender into consideration. The elected candidates will be notified immediately by the election committee.

3. Protection of the election and election expenses

Elections to the Employees Council are given special protection by statute. A person summoning people to an electoral assembly in the capacity of one of the three persons issuing the invitation, a person applying to the industrial court as one of the three applicants for the establishment of an election committee, and persons belonging to the election committee or appearing as candidates for the Employees Council election enjoy special temporary protection against regular dismissal.

The regular dismissal of the three **persons issuing the invitation** or the three **applicants** is impermissible up to the announcement of the results of the election. If no Employees Council election should have taken place, their employment contracts may not be cancelled in a regular fashion for a period of three months commencing with the date of the invitation or that of the application to the industrial court. Solely the instant cancellation of the employment contracts of those issuing the invitation or of the applicants remains a possible option, bearing in mind the strict pre-requisites for instant cancellation of contracts.

The regular dismissal of **members of the election committee** or **election candidates** is similarly impermissible up to the announcement of the results of the election. Furthermore, members of the election committee and election candidates enjoy protection against dismissal that will subsist over a six-month period commencing with the date of the announcement of the election results.

The instant cancellation of the employment contracts of members of the election committee and election candidates remains a possible option, bearing in mind the strict pre-requisites for instant cancellation of contracts. Up to the date of the announcement of the election results, the Employees Council has to consent to such an instant cancellation of the employment contracts of members of the election committee and election candidates. The employer can request the

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industrial court to make a replacement for the consent that has been denied.

Under the statutory threat of punishment, the employer is prohibited from hindering or influencing the Employees Council elections. No employee may be hindered in the exercise of his or her right to vote or to stand as a candidate.

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The cost of the Employees Council election shall be borne by the employer.

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