

Preparing for 2022 Works Council elections – changes resulting from the Works Council Modernisation Act

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The next regular Works Council elections will take place in spring 2022 from 1 March to 31 May in accordance with [section 13 of the German Works Council Constitution Act \(Betriebsverfassungsgesetz, BetrVG\)](#). The German Works Council Modernisation Act (Betriebsrätemodernisierungsgesetz) came into force on 18 June 2021 and introduced some changes that affect the (gradually progressing) preparations of these elections. Alongside further co-determination rights for Works Councils, with the Works Council Modernisation Act the legislature has, in particular, simplified both electoral procedures as well as the procedure for establishing Works Councils. These changes affect the electoral procedure as follows:

I. Appointing the Electoral Board and initiating Works Council elections

The preparation of Works Council elections commences with the appointment of the Electoral Board in accordance with [sections 16 and 17 BetrVG](#), regardless of which electoral procedure is to be used. The Electoral Board will be appointed by the Works Council, if the company already has one. In other companies the Works Council Modernisation Act has now increased the protection provided to employees who carry out the preparatory measures to establish a Works Council. The respective employees are given the opportunity to make a certified public statement which states that they intend to establish a Works Council. If they do so, their employment contract may not be terminated for personal or behavioural reasons in accordance with [section 15 \(3b\) of the German Protection Against Unfair Dismissal Act \(Kündigungsschutzgesetz, KSchG\)](#) unless extraordinary termination is permitted. Even if it is questionable here how realistic it is that an employee who plans to establish a Works Council firstly makes a certified public statement, the protection against dismissal in conjunction with establishing a Works Council has been significantly extended.

II. Electoral procedure and voting rights

More detailed information about the preparation and conduct of a Works Council election depends to large extent

on which electoral procedure applies. There are two different electoral procedures, the normal and the simplified procedure, which are regulated in [section 14a BetrVG](#). The simplified electoral procedure mainly differs from the normal electoral procedure in that the election is conducted with shorter time periods and within an election meeting instead of via a ballot box vote. The electoral procedure to be used is then in turn dependent on the number of employees with voting rights in the company. The legislature has now extended these limits with the Works Council Modernisation Act to the benefit of the simplified electoral procedure.

Whilst the simplified electoral procedure previously had to be used if there were 5 to 50 employees with voting rights in the company, and it could be chosen in consultation with the employer if the company had 51 to 100 employees with voting rights, the simplified electoral procedure has now been extended and must be used for companies with up to 100 employees. With this latest amendment, now companies with up to 200 employees have the option to choose between the simplified and the normal electoral procedure, whilst the normal electoral procedure is mandatory for companies with over 200 employees.

This extension is compensated for to a minimal extent by the fact that the legislature has also lowered the minimum age to vote in Works Council elections so that in accordance with [section 7 BetrVG](#) employees are eligible to vote in the elections from 16 years of age.

III. Voters' lists and displaying election notices

The Election Board must draw up the voters' lists in accordance with [section 2 of the Electoral Regulations \(Wahlordnung, WO\)](#) to prepare for the election. The employer must provide the Election Board with all required information so that the Election Board can correctly draw up the voters' lists. If the voters' lists are incorrect Works Council election may be contested in accordance with [section 19 BetrVG](#). The legislature has now set out additional requirements to contest the election results in section 19 (3) BetrVG in order to restrict the options for contesting. This states that the employer may no longer contest a

Works Council election on the basis of incorrect voters' lists if this incorrectness is based on the employer's information. Employees entitled to vote may also only contest the Works Council election on the basis of an incorrect voters' lists however, if the incorrectness of the voters' list is reported within two weeks of the declaration of the election in accordance with [section 4 WO](#).

IV. Lists of candidates

Finally it is now easier to suggest candidates. Until now, as per [section 14 BetrVG](#), suggested candidates may only be considered if they are accompanied by a certain number of supporting signatures amongst those employees entitled to vote for the respective election. In the past two support-

ing signatures were required in companies of up to 20 employees. This has been omitted without replacement. In companies with 21 to 100 employees the previous rule was that supporting signatures of 1/20th of the employees, at any rate not less than three persons, were required. This has now been reduced to a flat rate of two required people. Nothing has changed in companies with more than 100 employees; a minimum of 1/20th of the workforce, but a maximum of 50 employees, must provide their supporting signatures to support the suggested candidates.

In contrast to previous elections, the next Works Council elections will have to be conducted with notable changes for a number of companies. These changes should result in the elections being prepared for carefully and in good time as well as running as smoothly as possible.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Sandra Felicia Schramm unter +49 40 500360 765 or by email to sschramm@goerg.de. For further information about the author visit our website www.goerg.com.

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