

# 10 Pitfalls

## when dealing with works councils in Germany



Navigating works councils in Germany can be challenging for international businesses. While they play a key role in ensuring employee representation and compliance, there are several legal pitfalls that can trip up even experienced employers dealing for the first time with works councils in Germany. Missteps in communication, co-determination, or failure to comply with consultation requirements can lead to serious legal consequences. The following 10 pitfalls help to ensure a proper dealing with works council matters.

### 1 Never obstruct or interfere with a works council election

A works council can be established in any workplace with at least five permanent employees who are eligible to vote according to the German Works Constitution Act (*Betriebsverfassungsgesetz* – “**BetrVG**”). Employers must allow free and fair elections of a works council (sec. 20 BetrVG). Any attempt to obstruct, influence or intimidate candidates, deny access to resources, or delay procedures is a criminal offence (sec. 119 BetrVG) and may result in serious reputational and legal consequences.

### 2 Foster a cooperative relationship from day one

German law requires a relationship based on mutual trust and cooperation between employer and works council (sec. 2 BetrVG). Open communication and respect from the outset help avoid escalation and lay the foundation for constructive problem-solving. Persistent confrontation, strategic obstruction, or legal brinkmanship only lead to long-term conflict and inefficiency and should be avoided. Transparency when communicating with a works council is essential, especially during crises or

economic downturns. Employers must maintain open, timely, and honest communication with the works council to avoid mistrust and promote viable solutions. Concealment or “surprise actions” usually backfire.

### 3 Respect co-determination rights in social matters

Topics like working hours, shift schedules, introduction of new IT systems, vacation rules, performance monitoring or bonus systems are subject to mandatory co-determination at least to some extent (sec. 87 BetrVG). Employers cannot implement changes in these social areas without the works council’s approval – otherwise, they risk legal challenges or binding decisions by arbitration boards.

### 4 Never carry out personnel measures without proper involvement

Hiring, dismissals, transfers and changes to pay grades require prior consultation or consent by the works council (secs. 99, 102 BetrVG). Skipping these steps can lead to measures being declared invalid, and repeated violations may result in injunctions or legal sanctions.

## 5 Inform the works council early and fully on business matters

The works council (or the economic committee) must be promptly and comprehensively informed about major economic developments, including outsourcing or restructuring (secs. 106, 111 BetrVG). Delays or incomplete disclosure weaken trust and may violate the council's legal rights.

## 6 Involve the works council in structural or operational changes

Not only must the works council be informed on business matters, but they must also be actively involved. The participation rights of the works council under sec. 111 and sec. 112 BetrVG apply when companies with more than 20 employees plan significant operational changes – such as closures, relocations, or major reorganizations. In these cases, employers are legally obliged to enter timely negotiations with the works council regarding a reconciliation of interests and, if applicable, a social compensation plan. If these obligations are ignored, the company risks costly consequences such as compensation claims under sec. 113 BetrVG, legal disputes, or a mandatory social plan imposed by an arbitration board.

## 7 Grant access to required trainings and cover the appropriate costs

Works council members are entitled to training necessary for the work of the works council, paid for by the employer if the costs are appropriate (secs. 40 (1), 37 (6) BetrVG). These are not optional perks, but essential for enabling council members to perform their duties knowledgeably and in compliance with the law. However, employers are of course allowed to deny such trainings which are not required and /or related costs are out of bounds.

## 8 Do not discriminate or favor works council members

According to sec. 78 BetrVG, council members must not be disadvantaged or favored because of their role. This applies to remuneration, promotions, job security or benefits. Both unfair treatment and special privileges undermine the integrity of the council and can trigger legal consequences.

## 9 Respect works council members paid time off

Under German labor law, works council members are entitled to paid time off to fulfill their duties (sec. 37 BetrVG). It covers a broad range of activities, including attending internal meetings, consulting with employees, preparing for negotiations, and participating in training sessions. The employer has no legal basis to deny or postpone this time off, even if the absence creates operational challenges. Any interference can be considered a violation of co-determination rights and may result in legal consequences or strained relations with employee representatives.

## 10 Be aware of strong protection against dismissal

Works council members are protected against dismissal not only during their term of office but also for up to one year afterwards according to sec. 15 of the Act Against Unfair Dismissal (*Kündigungsschutzgesetz* – “**KSchG**”). Accordingly, they can only be terminated with prior approval from the works council or a prior court approval and only for exceptional reasons. This extended protection applies even if the employee leaves the works council early or if the works council is dissolved. Employers must factor in this long-lasting protection when planning organizational changes or terminations involving former council members.

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Dr. Christian Maron, a leading international labor and employment lawyer at Taylor Wessing Germany, has been advising global companies expanding into the German market for more than fifteen years. Alongside his dedicated team, they help businesses align their global operations with German labor and employment law, providing strategic guidance on HR matters, employment

contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

**Want to learn more?**

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