

Germany's Works Constitution Act: Important Changes to the Law Effective June 2021

Article By:

Anja Becher

The Act to Promote Works Council Elections and Works Council Activities in a Digital Working World (which is also known as the "Works Council Modernization Act" or *Betriebsrätemodernisierungsgesetz*) went into effect in Germany on June 18, 2021.

The goal of the law is, among other things, to facilitate the work of works councils and to extend their co-determination rights. The [Works Constitution Act](#) (*Betriebsverfassungsgesetz* (BetrVG)) has undergone extensive changes and significant additions in the course of this process, and employers may want to familiarize themselves with the new provisions.

The following changes take effect immediately.

Virtual Meetings

The law still gives preference to works council meetings to take place in person, but permanently permits virtual participation by means of video and telephone conference. For this kind of arrangement to be in compliance with the law, the works council's rules of procedure must include conditions for virtual meeting participation that members who participate virtually must abide by.

In addition, for a virtual meeting to comply with the amended law, there must not be any objections from at least one-fourth of the works council's members (within a fixed time period) and the meeting must be conducted in a way that ensures that confidentiality is maintained (i.e., third parties must be prevented from becoming aware of the discussion contents). Accordingly, works council's members may also participate in meetings partly in person and partly virtually.

Under the amended law, only the works council may decide whether to conduct a works council meeting on a (partially) virtual basis.

Quorum

Works council members participating virtually in a works council meeting are deemed to be present and must take into account when the legal quorum is examined. In order to be considered as present, the members must provide confirmation of participation in text form, for example, by email,

messenger, or chat. Only if at least half of the works council members attend the meeting (virtually or in person) effective resolutions can be made by the works council.

Joint Works Council and Others

The above amendments also apply to the joint and group works council, the representative body of young people and trainees, the speakers' committee, the economic committee, and the committees of the works council. The law does however not provide for such an extension for the representation of severely disabled employees.

No Virtual Staff Meetings

The law does not include a corresponding provision permitting staff meetings to be held virtually, which means that staff meetings must continue to be conducted in person.

No Virtual Conciliation Committee Meetings

The ability to conduct conciliation committee proceedings on a virtual basis expired on June 30, 2021. The amended law does not extend the exception. As of July 1, 2021, conciliation committee proceedings must be conducted in person.

The conciliation committee may now record its resolutions in an electronic form, and the committee's chairperson may sign the resolution with a qualified electronic signature.

Electronically Signed Collective Agreements

Under section 77(2) sent. 3 of BetrVG, employers and works council may sign works agreements electronically. Under 112(1) sent. 1 of BetrVG, balance-of-interest agreements and social plans may also be signed electronically.

Personal Data Protection

A new provision is included in section 79a of BetrVG, under which employers are person responsible under the relevant data protection laws for the personal data that the works council processes.

Artificial Intelligence

The amended law allows the works council to consult an expert whenever the employer wants to introduce and use artificial intelligence (AI). From now on, the involvement of an expert is always considered necessary in such cases under section 80(3) of BetrVG. The involvement of an expert (e.g. an IT specialist) is likely to lead to significant additional costs for employers, as the works council will additionally be able to consider the involvement of legal counsel as necessary under Section 80(3) BetrVG when it comes to the legal implementation of the introduction and use of AI. Regrettably, the amended law does not define "artificial intelligence."

Selection Guidelines

If AI should be used for personnel selection in case of hiring, relocation, regrouping or dismissal according to guidelines (so-called selection guidelines), the works council may participate in the

decision-making process according to the new section 95(2a) of BetrVG.

Co-determination of Mobile Work

The amended law added a new co-determination right to section 87(1) No. 14 of BetrVG according to which the works council may have a say in the design of arrangements of mobile work relying on information and communication technology. The relevant issues that may emerge in designing these arrangements include, for example, employee accessibility, the use of work equipment, reimbursement of expenses, safety issues related to mobile work, and other issues.

New Mobile Work Arrangements

The newly introduced section 87(1) No. 14 of BetrVG does not give the works council the right to introduce mobile working arrangements. Neither the works council nor employees can impose a mobile work arrangement on an employer. The employer alone decides whether to allow mobile working.

Mediation

Under the new section 96(1a) of BetrVG, in cases in which an employer and works council cannot agree on vocational training measures, a conciliation committee may mediate the dispute.

In addition to the new regulations, there are important changes regarding election procedures that will be decisive for the regular works council elections next spring. We will update you on those changes in a separate article before the works council elections take place.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume XI, Number 232

Source URL: <https://natlawreview.com/article/germany-s-works-constitution-act-important-changes-to-law-effective-june-2021>