



Newsflash Works Council - Part I

Russell Advocaten

The works council in times of crisis

The right to be consulted and the right of consent are 'special powers' of the works council. The works council has these powers at all times, hence also in times of crisis. Regarding the corona crisis: What are the rights of the works council? When should the works council be involved?

Right to be consulted (Article 25 Works Councils Act)

The works council has a right to be consulted with regard to 'major decisions' of the entrepreneur. Whether a decision qualifies as a 'major decision' depends on the number of personnel affected by the decision, the nature of the consequences for the personnel and the financial implications. Non-everyday decisions and/or decisions that have far-reaching consequences for the organization are usually qualified as 'major decisions'.

Measures taken because of the coronavirus have (far-reaching) consequences for the organisation and the employees, thus are by no means everyday decisions. For instance, a reorganization, a significant reduction in the company's activities or even (partial) termination of business activities. Pursuant to Article 25 paragraph 1 (c) and (d) of the Works Councils Act advice must be sought on these decisions.

Right of consent (Article 27 Works Councils Act)

The works council has a right of consent with regard to a decision to adopt, amend or revoke certain regulations. Frequently taken measures by entrepreneurs as a result of the corona crisis are: working at home, adjusting the working hours and the adoption or amendment of the sick leave and reintegration policy. Does the works council have a right of consent regarding (temporary) measures taken at the time of a crisis?

In principle, the right of consent only applies to enduring adoption, amendment or revocation of regulations. However, if temporary measures have irreversible consequences, the works council has a right of consent after all. It will depend on the circumstances whether an adoption, amendment or revocation is enduring and whether a temporary measure has irreversible consequences. If the abovementioned (temporary) measures that are taken because of the coronavirus are enduring or have irreversible consequences, the works council's consent is required on the basis of - for example - Article 27 paragraph 1 (b) and (d) of the Works Councils Act.

Right of information and initiative (Article 23, 24 and 31 Works Councils Act)

Not only for the entrepreneur, but also for the works council it is important that adverse consequences for the personnel and the continuity of the company are limited as much as possible. The works council hence ensures that the entrepreneur provides a safe and healthy workplace, both at work and at home. To this end, the entrepreneur must take the necessary measures, such as providing hand sanitizer and frequent cleaning of surfaces in the workplace, reducing social contacts and providing facilities for working at home. The entrepreneur can first agree upon such measures with the works council. In the absence of clear information from the entrepreneur to the employees, the works council can discuss this with the entrepreneur. On top of that, if necessary, the works council can exercise the right of initiative.

If you have any questions regarding the aforementioned, please do not hesitate to contact us!

Yours sincerely,
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