

Hungary

Introduction

The Hungarian Constitution grants to each person the right to establish and/or be a member of an organisation in order to exercise his or her economic and social rights. Consistent with this constitutional provision, Act XXII of 1992 on the Labour Code as amended (the “Labour Code”) provides detailed regulations on labour or trade unions and Works Councils (also referred to as factory councils). In addition to the Labour Code, other legislation, such as Act VII of 1989 on Strikes, as amended, and Act II of 1989 on the Freedom of Association as amended (“Association Act”), also provide regulation on unions and Works Councils.

Trade Unions

The General Role Of Trade Unions

The Labour Code defines a trade union as an employee organisation whose primary function is the promotion and protection of employees’ interests as they relate to the employment relationship.

According to the Association Act, 10 private individuals may establish a trade union by executing its statutes and electing the union’s managing and representative bodies. The trade union is established on the date on which it is registered with the competent court of law.

The Scope Of Trade Union Rights In Businesses

The Labour Code permits employees to establish trade unions within the organisation of the employer. A trade union may operate local organisations inside a company and may involve its members in such operation.

A trade union may inform its members of their rights and obligations concerning their material, social, cultural, living, and working conditions and represent them against the employer and/or before state authorities in matters concerning labour relations and employment.

A trade union may represent its members, on the basis of a power of attorney, before a court of law or any other authority or organisation, on matters concerning their living and working conditions.

An employer may not refuse to allow a non-employee representative of a trade union to enter the employer's premises if at least one member of the trade union (that the non-employee represents) is employed by the employer. The trade union must inform the employer in advance in writing of any intention to enter the employer's premises. When on the employer's premises, the trade union representative must comply with all the regulations of the employer's order of business.

The employer must request the opinion of the trade union on its contemplated measures affecting a larger group of employees, in particular plans for reorganization, transformation of the employer, conversion of an organizational unit into an independent organization, and modernization. The trade union must deliver its opinion in connection with the employer's planned actions within a period of 15 days. Failure to do so is to be interpreted as granting consent to such action.

In the event of a legal succession, the legal predecessor and the legal successor of the employer are required to inform the trade union within 15 days prior to the legal succession, of the reason for, and consequences of, the legal succession, and to initiate consultation on the planned action and arrangements.

Furthermore, the trade union may request from the employer information on all issues concerning the employees' employment-related economic and social welfare interests. The employer may not refuse to provide this information or refuse to provide a justification for its actions when requested by the trade union. The trade union also may provide the employer with the union's position concerning the employer's actions or decisions and, further, to initiate negotiations in connection with those actions or decisions. If there is no Works Council operating within the company, the employer is obliged to inform the trade union of those matters of which the Works Councils are to be informed.

The trade union may also examine an employer's compliance with regulations relating to working conditions. The trade union may draw the attention of the relevant authorities to any mistakes or omissions observed in the course of the union's inspection, and, if the authorities do not take the necessary measures in

a timely fashion, the union may institute legal proceedings against the employer. In such a case, the authority conducting the proceedings must inform the trade union of the result of the proceedings.

The person acting on behalf of the trade union is required to keep confidential all the information which has been conveyed to him or her as confidential by the employer and may use it strictly for purposes determined in the Labour Code. The person acting on behalf of the trade union may disclose the information obtained in connection with his or her activity only to the extent by which the employer's lawful economic interests and the employees' personal rights are not jeopardized. This obligation applies to the above-specified person for an unlimited period of time.

The trade union may also object to an employer's unlawful action or omission that directly affects the employees or the organisations representing their interests. An objection must be delivered to the managing director of the employer within five days of, and no more than one month after, the date on which the trade union learned of the action or omission. If the employer disagrees with the objection, a conciliation must be commenced within three business days. If the conciliation is unsuccessful within seven days after the objection has been made, then, within five days of the failure of the conciliation, the trade union may commence proceedings before a court of law. The court must decide on the legal dispute within 15 days.

A union's objection freezes the implementation of the action by the employer until the completion of the conciliation procedure or until the dispute has been decided by the court.

However, the trade union may not raise an objection in any matter in respect of which an employee may initiate a court action.

Additionally, an employer must ensure that its employees' trade union has the opportunity to present public information and announcements and data related to the trade union's activities in a manner that falls within the procedures of the employer or in another appropriate way. By agreement with the employer, the trade union may use the employer's premises after or during working hours for the purpose of its activities of interest representation.

An employer may not demand from any employee a statement concerning his or her trade union affiliation. Additionally, an employment relationship, or its continuation, may not be made dependent on: (i) whether or not the employee

is a member of a trade union; (ii) whether the employee terminates a previous trade union membership; or (iii) whether the employee joins a trade union designated by the employer. It is also unlawful to terminate an employment relationship and/or to discriminate against an employee in any way due to his or her trade union affiliation or activities or to make any work-related entitlement or benefits dependent on affiliation or non-affiliation with a trade union.

The Labour Code requires an employer to exempt trade union officials from work for a certain period of time, according to a formula established in the Labour Code, which depends primarily on the number of employees who are members of the trade union. The employer must be informed in advance if a trade union official intends to be absent from work due to trade union related activities. Trade union officials are also entitled to receive an “absence fee” for the duration of such absence, which includes his or her base wages and other ordinary supplementary payments to which that official is entitled.

The employer must also allow one day of extraordinary paid leave annually for employees who are members of a trade union for the purpose of union-organised training.

The Labour Code contains special rules protecting trade union officials. For example, the prior consent of a trade union body, which is above the relevant trade union official in the trade union’s hierarchy, is required for the employer for the temporary assignment, the secondment for at least 15 days, the transfer to another workplace, the placement to another employer of a trade union official, and the termination of the employment relationship with an official by ordinary notice. The Labour Code requires the trade union to comment in writing on the above within eight days of the request for such comment.

Furthermore, the opinion of the appropriate trade union body must be requested before termination of a trade union official by extraordinary notice. The Labour Code requires the trade union to comment in writing concerning the above within three days of receipt of the employer’s notice on its intention to terminate the employment of such an official with extraordinary notice.

The appropriate trade union body must also be notified in advance concerning the application of legal consequences for the serious violation by an official of any

obligation originating from the employment relationship. The appropriate trade union body must also be notified in advance regarding the transfer of an official (in a position subject to transfer) to another workplace.

A trade union official is entitled to the above-described protection for the duration, and for a period of one year following the expiration, of his or her term, provided that the individual was a union official for at least six months.

The Collective Agreement

A collective (bargaining) agreement between the employer(s) or an organisation that represents the interests of the employer(s) and the trade union(s) regulates the rights and duties arising from the employment relationship, the manner of exercising and fulfilling the same, the procedural rules related thereto, and the relationship between the parties thereto. The trade union whose candidates received at least 50% of the votes in the Works Council election is deemed as the representative for such negotiations. If more than one Works Council is elected within the company, the results of each election are combined to determine representation rights. A trade union whose membership includes at least two-thirds of the employees of an employer in the same employment group is also deemed as a representative. If a trade union qualifying as a representative union requests the employer to enter into negotiations with that trade union concerning the collective agreement, the employer may not refuse to commence such negotiations.

Each year the employer must propose to negotiate the regulations on the remuneration for work set out in the collective agreement with the representative trade union.

Unless otherwise agreed by the parties, the collective agreement may be terminated by either party upon three months' notice, but it may not be terminated within six months after the execution thereof.

The parties of the collective agreement must jointly send it to the minister in charge of employment and labor for registration within 30 days following the date of conclusion. Furthermore, the parties are also required to provide the related data and information concerning the respective collective agreement, and they are also required to report to the minister any changes in the collective agreement (e.g., amendments, termination, etc.).

Works Councils

Election Of A Works Council

The Labour Code provides that a Works Council must be elected at all companies or at all of the employer's independent premises or sites where the number of employees exceeds 50.

If the number of employees (in total or at any independent division of the company) is less than 51 but exceeds 15, no Works Council is required to be elected, but a workers' representative must be elected by the employees. The Labour Code's provisions regulating the rights and obligations of a Works Council apply equally to the workers' representative.

Works Council's members are elected for a three-year term. Depending on the number of employees at the time of the elections of the Works Council, the Works Council must be comprised of at least the following number of members:

Number Of Employees	Minimum Number Of Works Council's Members Required
Not Exceeding 100	3
Not Exceeding 300	5
Not Exceeding 500	7
Not Exceeding 1,000	9
Not Exceeding 2,000	11
Above 2,000	13

If the number of Works Council's members does not meet the above requirements over a six-month period, new Works Council's members must be elected to ensure that the above minimum requirements for Works Council's membership are met.

The Labour Code contains detailed provisions regarding the election of the Works Council's members and of the workers' representative.

An employee is eligible to be elected as a Works Council member if he or she is able to act in this capacity and has been employed by the employer for at least six months (not required for Works Councils in newly established companies).

An employee may not be elected as a Works Council's member if the worker:

1. Exercises the employer's rights with respect to other employees (e.g., the right to enter into and to terminate employment contracts);
2. Is a close relative (i.e., spouses, next of kin, spouse's next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers and sisters, and common-law spouses) of the employer or the executive officer of the employer; or,
3. Is a member of the committee organising the Works Council's elections.

Financial And Other Benefits For The Works Council

An employer must ensure the Works Council has the opportunity to publish information and announcements related to its activities in a manner customary at the employer's facilities or in any other suitable manner.

A Works Council member is entitled to free time equal to 10% of his or her monthly base working hours, and the chairman of the Works Council is entitled to free time equal to 15% of his or her monthly base working hours, in order to perform Works Council related activities. The employer must also pay the Works Council's member an "absence fee" in respect of this time, which includes the Council member's base wage and other ordinary supplementary payments.

The employer must also pay the justified and necessary costs of the election and operation of the Works Council. The amount of such costs is jointly determined by the employer and the Works Council. In the case of a dispute in respect of such costs, a conciliation may be initiated by either party in writing, pursuant to the relevant Labour Code provisions.

Where the employer has more than 1,000 employees, the employer must remunerate the Works Council's chairman. The amount of the remuneration is determined jointly by the Works Council and the employer. If the number of employees does not exceed 1,000, the employer may only pay remuneration to the Works Council's chairman with the consent of the Works Council.

Functions And Rights Of A Works Council

The Right Of Joint Decision

The Works Council has the right of joint decision with the employer in matters relating to the utilisation of financial assets designated for welfare purposes (e.g., certain social contributions) as specified in the collective agreement (if any) and in respect of the utilisation of institutions and real properties of this nature.

The Right To Express Opinions

The employer must seek the opinion of the Works Council prior to making decisions regarding:

1. Measures affecting a large group of employees, particularly those involving plans for reorganisation, transformation of the employer, conversion of an organisational unit into an independent organisation, privatisation, and modernisation;
2. Plans to establish a system of staff records, the range of data to be put on file, the contents of a data sheet to be filled out by the employees, and a staff policy plan;
3. Plans on employee training, ideas for utilising subsidies aimed at promoting employment, and relating to early retirement;
4. Plans for actions pertaining to the occupational rehabilitation of persons who suffered some degree of health impairment or whose capacity to work has changed;
5. Plans for measures relating to the retraining of workers with a changed working ability;
6. The plan for scheduling annual leave;
7. The introduction of new work organisational methods and performance requirements;
8. Drafts of internal regulations affecting the employees' substantive interests; and/or,
9. Tenders announced by the employer accompanied by a financial or honorary reward.

The Works Council must deliver its opinion to the employer concerning the employer's planned measures listed above, within 15 days after the chairman of the Works Council, or another Council member designated in the Works Council's bylaws, receives written notification of the employer's contemplated decision or action. If the Works Council fails to make any comment, it is deemed to have consented to the proposed measure.

Although the Works Council's opinion is not binding on the employer, a decision on any of these items made by the employer without having sought the Works Council opinion in advance will be invalid.

The Right To Information

The employer must inform the Works Council about:

1. Basic issues affecting the employer's business situation, at least once every six months;
2. Any plans for a significant modification to the employer's activities or contemplated investments;
3. Changes in wages and earnings, the cash flow related to the payment of wages, the characteristics of the employment and the working conditions, and the utilisation of working hours, at least once every six months; and
4. Number and position of employees working from home, at least once every six months.

The Works Council must deliver its opinion to the employer, concerning the employer's planned measures listed above, within 15 days after the chairman of the Works Council, or another council member designated in the Works Council's bylaws, receives written notification of the employer's contemplated decision or action. If the Works Council fails to make any comment, it is deemed to have consented to the proposed measure.

Any measure taken by an employer in violation of the provisions is invalid. The Works Council may request a court to establish such invalidity. The court must decide on the dispute within 15 days in non-contentious proceedings.

The Works Council may inspect the employer's records in the process of exercising its right of joint decision and expression of opinion.

Additionally, the Works Council may request from the employer information on all issues related to the employees' economic and social interests in connection with their employment. The employer may not refuse to provide such information. The Works Council, or one of its members, may disclose information and data obtained in the course of operations only if the disclosure does not endanger the employer's justified business interests or infringe the employees' personal rights.

Furthermore, the Works Council must be impartial in relation to a strike organised at the employer. The Works Council may not organise, support, or prevent a strike. The membership of a Works Council's member participating in a strike is suspended for the duration of the strike.

The provisions on the protection of trade union officials also apply for the protection of Works Council's members, where the rights of the trade union body are exercised by a Works Council. In case of a workers' representative, the rights of the trade union body are exercised by the community of employees, if the employee representative is not a trade union official.

European Works Council

A new act (Act XXI. of 2003 on the establishment of European Works Councils (EWC) and the procedures of consultation and information of employees) (the "Act") providing for the establishment and operation of European Works Councils has already been enacted in Hungary. The Act has entered into force on the date of accession to the European Union.

An EWC may be established in a Community-level company or in a Community-level company group (i) by the initiative of the central management of such company or such company group or (ii) at the request of the employees (or by the representative bodies of the employees). If the EWC's establishment is initiated by the employees, a written request of at least 100 employees employed at least at two different business associations in two different member states is required.

The European Works Council serves to ensure that employees possess the right to receive information and to be consulted by the employer in a formalized manner regarding the status of the company and the employees. The European Works Council has the right to request and receive general information from the company at least once a year and to be informed of certain particular circumstances affecting the employees.

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