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# Employees' Trustee Act<sup>1</sup>

Passed 13.12.2006  
RT I 2007, 2, 6  
Entry into force 01.02.2007

Amended by the following acts

Passed	Published	Entry into force
17.12.2008	RT I 2009, 5, 35	01.07.2009
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date determined by the Decision of the Council of the European Union on abrogation of a derogation established in respect of the Republic of Estonia on the basis of Article 140(2) of the Treaty on the Functioning of the European Union, Council Decision No. 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24–26).
25.01.2012	RT I, 10.02.2012, 1	20.02.2012

## Chapter 1 GENERAL PROVISIONS

### § 1. Scope of application of Act

(1) This Act regulates the activities of an employees' trustee (hereinafter *trustee*) in representing the employees and public servants (hereinafter *employees*), who authorised him or her, in relations with the employer and the employees.

(2) For the purposes of this Act, an employer in public service is a state or local government authority.

### § 2. Trustee

(1) A trustee is an employee of an employer who is elected by the general meeting of the employees of the employer (hereinafter *general meeting*) as their representative in the performance of the duties arising from the law in relations with the employer.

(2) A trustee is deemed to be an employees' representative within the meaning of the Employment Contracts Act of the Republic of Estonia.

### § 3. Right of representation of trustee

In case of several trustees, every trustee may represent the employees in the performance of all duties arising from the law, unless the general meeting has decided that the trustees or some of them may represent the employees jointly.

### § 4. Co-operation between trustee and employer

A trustee and an employer shall co-operate in the spirit of mutual trust and in good faith, taking into account the rights, obligations and interests of the employees and the employer.

## **Chapter 2**

# **ELECTION AND AUTHORITY OF TRUSTEE**

### **§ 5. Calling of general meeting**

(1) The general meeting may be called by:

- 1) a trade union operating at the employer,
- 2) the majority of the members of a trade union who are employed with the employer if the trade union has not been founded at the employer, or
- 3) at least 10 per cent of the employees of the employer.

(2) The person who calls the general meeting shall notify the employees of the reason for calling and the time of the general meeting at least two weeks in advance.

### **§ 6. Quorum of general meeting**

The general meeting has a quorum if at least half of the employees of the employer participate in the meeting.

### **§ 7. Election and removal of trustee**

(1) The general meeting shall decide the conditions and the procedure for the election and removal of a trustee.

(2) The conditions and the procedure for the election and removal of a trustee shall ensure that all employees have the possibility to participate in the election and removal of a trustee.

(3) The trustee shall be elected by secret ballot. Candidates for trustee may be presented by all employees and the trade union operating at the employer.

(4) Upon agreement with the employer, the general meeting may elect several trustees.

(5) Trustees may elect from among themselves a chief trustee who shall organise the activities of the trustees.

(6) The general meeting shall immediately notify the employer in writing or in a format which can be reproduced in writing of the election of the trustee and the term of his or her authority and of removal of the trustee.

(7) The general meeting shall notify the employer in writing or in a format which can be reproduced in writing of the right of the trustees to represent the employees jointly.

### **§ 8. Term of authority of trustee**

(1) The term of authority of a trustee is three years, unless the general meeting has decided otherwise.

(2) Upon transfer of the enterprise, the authority of a trustee shall be in force until the expiry thereof but not for longer than one year after the transfer.

(3) The restrictions provided for in section 181 of the Law of Obligations Act shall not be applied upon transfer of the authority of a trustee.

[RT I 2009, 5, 35 - entry into force 01.07.2009]

## **Chapter 3**

# **RIGHTS AND OBLIGATIONS OF TRUSTEE**

### **§ 9. Rights of trustee**

A trustee has the right to:

- 1) freely examine the working conditions, including the work organisation;
- 2) receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information;
- 3) [repealed – RT I 2009, 5, 35 – entry into force 01.07.2009];
- 4) hold negotiations with the employer for entering into a collective agreement under the conditions and pursuant to the procedure provided for in the Collective Agreements Act if there is no trade union at the employer or no employees belonging to the trade union are employed with the employer;
- 5) represent employees in the resolution of a collective labour dispute under the conditions and pursuant to the procedure provided for in the Collective Labour Dispute Resolution Act if there is no trade union at the employer or no employees belonging to the trade union are employed with the employer;
- 6) to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer;

- 7) have recourse to a labour dispute resolution body for resolution of a dispute arising from the confidentiality of the information obtained or refusal to provide information;
- 8) training for the performance of his or her duties pursuant to the procedure provided for in section 14 of this Act;
- 9) involve experts in the performance of his or her duties;
- 10) upon agreement with the employer, use the premises and other resources of the employer necessary for the performance of the duties of a trustee.

#### **§ 10. Obligations of trustee**

A trustee is required to:

- 1) participate in informing and consulting;
- 2) communicate information to the employer and to employees;
- 3) monitor compliance with working conditions and notify the employer and, if necessary, the labour inspector of the place of business of the employer, of violation;
- 4) at the request of an employee, represent the employee in a labour dispute with the employer before having recourse to a labour dispute resolution body;
- 5) co-operate in the avoidance of disruption of work if a collective agreement has been entered into by a trustee under the conditions and pursuant to the procedure provided for in the Collective Agreements Act;
- 6) co-operate with a shop steward, the working environment representative and working environment council.

#### **§ 11. Obligation of trustee to maintain confidentiality of information**

(1) A trustee shall not disclose to third parties, during the term of authority or after the expiry of authority, personal data which has become known to him or her in the course of performance of his or her duties or any information provided by the employer expressly in confidence.

(2) A trustee shall not use unlawfully, during the term of authority or after the expiry of authority, personal data which has become known to him or her in the course of performance of his or her duties or any information provided by the employer expressly in confidence.

(3) The obligations specified in subsections (1) and (2) of this section shall not be applied to the communication between the trustee and another trustee elected at the same employer and an expert involved in consulting.

(4) A trustee shall communicate the information received in confidence to another trustee or to an expert expressly in confidence.

#### **§ 12. Obligation of expert to maintain confidentiality of information**

(1) The obligations specified in subsections 11(1) and (2) of this Act are binding to an expert involved in consulting.

(2) The obligations specified in subsections 11(1) and (2) of this Act shall not be applied to the communication between an expert and another trustee elected at the same employer.

(3) An expert shall communicate the information received in confidence to another trustee expressly in confidence.

#### **§ 13. Time of performance of duties of trustee**

(1) An employee shall, by agreement with the employer, perform the duties of a trustee during working time or outside of working time.

(2) The conditions and the procedure for the performance of the duties of a trustee shall be agreed on by the employer and the trustee.

(3) The employer shall guarantee to the trustee for the performance of his or her duties during working time:

- 1) in case of representation of 5 to 100 employees, at least 4 hours per a working week;
- 2) in case of representation of 101 to 300 employees, at least 8 hours per a working week;
- 3) in case of representation of 301 to 500 employees, at least 16 hours per a working week;
- 4) in case of representation of over 500 employees, at least 40 hours per a working week.

#### **§ 14. Training of trustee**

(1) The employer shall enable a trustee to participate, to a reasonable extent, in the training necessary for the performance of his or her duties.

(2) The parties may agree that the expenses relating to training shall be borne by the employer.

#### **§ 14<sup>1</sup>. Guarantee for time of performance of duties of trustee and for time of training**

A trustee shall be retained the average wages for the time of performance of his or her duties pursuant to subsection 13(3) of this Act and for the time of training.  
[RT I 2009, 5, 35 - entry into force 01.07.2009]

## **Chapter 4 RIGHTS AND OBLIGATIONS OF EMPLOYER IN PROVISION OF INFORMATION**

#### **§ 15. Rights and obligations of employer in provision of confidential information**

- (1) Any information which the employer provides to the trustee expressly in confidence is confidential.
- (2) The employer is required to justify the confidentiality of the information if the trustee does not agree with the confidentiality of the information.

#### **§ 16. Refusal to provide information**

- (1) The employer may refuse to provide information if disclosure of the information seriously harms or may harm the activities of the employer.
- (2) Upon refusal to provide information, the employer shall give justification based on objective criteria as to why the disclosure of the information seriously harms or may harm the activities of the employer.
- (3) The employer may not refuse to provide information on the number of employees.

## **Chapter 5 INFORMING AND CONSULTING**

#### **§ 17. Application of informing and consulting**

- (1) An employer who employs at least 30 employees is required to apply the informing and consulting provided for in this Chapter.
- (2) The provisions of this section shall not be applied to informing and consulting in public service.

#### **§ 18. Determination of number of employees**

- (1) The employer shall determine the number of employees:
  - 1) upon approval of annual report;
  - 2) when the obligation to inform and consult specified in subsection 20(1) of this Act arises.
- (2) Upon determining the number of employees, the employer shall take into account the six months' average number of employees as of the date on which the obligation to inform and consult arises.

#### **§ 19. Definition of informing and consulting**

- (1) Informing means provision of information to a trustee or, in his or her absence, to the employees on an appropriate level which allows the employees to receive in due course a clear and sufficiently detailed overview of the structure and economic and employment situation of the employer and the possible development thereof and of other circumstances affecting the interests of employees, and also to understand the effects of the situation and other circumstances on the employees.
- (2) Consulting means exchange of views and the establishment of a dialogue between the trustee or, in his or her absence, the employees and the employer on an appropriate level which allows the trustee or the employees to express opinions and obtain from the employer reasoned responses to the expressed opinions for the purposes of reaching an agreement on the provisions of clauses 20(1)2) and 3) of this Act.

#### **§ 20. Contents of informing and consulting**

- (1) An employer shall inform and consult at least of the following circumstances pertaining to employees:
  - 1) the structure of the employer, the staff, including the employees performing duties by way of temporary agency work, changes therein and planned decisions which significantly affect the structure of the employer and the staff;  
[RT I, 10.02.2012, 1 - entry into force 20.02.2012]
  - 2) planned decisions which are likely to bring about substantial changes in the work organisation;

3) planned decisions which are likely to bring about substantial changes in the employment contract relationships of employees, including termination of employment relationships.

(2) The employer shall inform of an annual report prepared pursuant to the Accounting Act no later than within 14 days after the approval of the annual report.

#### **§ 21. Manner of informing and consulting**

(1) An employer shall provide information in a manner which enables to thoroughly examine the information and, if necessary, prepare for consultations with the employer. The employer shall provide information in writing or in a format which can be reproduced in writing, unless the parties have agreed otherwise.

(2) A trustee or, in his or her absence, the employees have the right to present a written opinion or make a proposal concerning the information received from the employer or notify of the intention to commence consulting within 15 working days as of the receipt of the information. If the employer does not take the proposals into consideration, the reasons therefor shall be given at the earliest opportunity in writing or in a format which can be reproduced in writing.

(3) The employer shall commence consulting within seven working days as of the receipt of the request for consulting.

(4) The employer shall explain in consulting the activities planned and the consequences thereof for the employees. The parties shall seek to reach an agreement on the planned activity.

(5) The trustee or, in his or her absence, the employees may involve experts in the consulting.

## **Chapter 6 STATE SUPERVISION**

#### **§ 22. Exercise of state supervision**

State supervision over compliance with the requirements provided for in clauses 9 1) and 2), subsection 13(3) and sections 17, 18 and 20 of this Act shall be exercised by the Labour Inspectorate under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.  
[RT I 2009, 5, 35 - entry into force 01.07.2009]

#### **§ 23. Challenge proceedings concerning precept**

Challenge proceedings concerning a precept are subject to the provisions of the Occupational Health and Safety Act.  
[RT I 2009, 5, 35 - entry into force 01.07.2009]

## **Chapter 7 LIABILITY**

#### **§ 24. Violation of obligation to inform and consult**

(1) Failure to perform the obligation to inform or consult or provision of false information by the employer is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.  
[RT I 2010, 22, 108 - entry into force 01.01.2011]

#### **§ 25. Violation of obligation to maintain confidentiality of information**

Violation of the obligation to maintain the confidentiality of information by a trustee or an expert involved in consulting is punishable by a fine of up to 100 fine units.

#### **§ 26. Proceedings**

(1) The misdemeanours provided for in sections 24 and 25 of this Act are subject to the provisions of the General Part of the Penal Code and the Code of Misdemeanour Procedure.

(2) The body conducting extra-judicial proceedings pertaining to the misdemeanours provided for in sections 24 and 25 of this Act is the Labour Inspectorate.

## **Chapter 8**

# **IMPLEMENTATION OF ACT**

### **§ 27. Term of authority of elected trustees**

The term of authority of elected trustees shall be in force until the expiry of the term, but not for longer than one year as of the entry into force of this Act.

**§ 28.–§ 30.**[Omitted from this text]

### **§ 31. Repeal of Employees' Representatives Act**

The Employees' Representatives Act is repealed.

### **§ 32. Entry into force of Act**

This Act enters into force on 1 February 2007.

<sup>1</sup>Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.03.2002, pp. 29–34).