

GUIDANCE ON MANAGEMENT'S DUTY TO PROVIDE INFORMATION



Guidance on management's duty to provide information

The Cooperation Agreement lays down the framework for cooperation between management and employees with a view to involving employees in the work on workplace goals and strategy (clause 1 of the Cooperation Agreement).

The Cooperation Agreement defines various duties and tasks for management and employee representatives, respectively.

This joint guidance has been revised as a result of the OK21 collective agreement and replaces the previous version from 2005.

Management's duty to provide and discuss information is based partly on the main agreements and partly on the EU Directive of 11 March 2002 establishing a general framework for informing and consulting employees. The Directive sets out minimum requirements regarding the right to information and consultation as well as requirements for the enforcement of the principles set out in the Directive. The parties to the collective agreement agree that "consultation" in the EU Directive is equivalent to "discussion" in the Cooperation Agreement and that the requirements have been implemented in clause 3 of the Cooperation Agreement on information and discussions and in clause 15 on breach of the duty to provide information.

Management's duty to provide information and discuss is set out in clause 3(2) of the Cooperation Agreement. This guidance explains the purpose of management's duty to provide information, what it covers and how to fulfil it to add value to the work of joint consultation committees.

The provisions on information and discussion set requirements for the information from management that must be provided to the joint consultation committee. Focus should be on written information, the timing of the information and discussions, and whether infor-

mation and discussions are taking place at the right level.

As the provisions contain sanctions in the event of a breach of the duty to provide information (sanctions can include penalty), it is important that joint consultation committees and especially management in state workplaces pay close attention to the requirements for information and discussion.

Joint consultation committees as a dialogue forum for information and discussion

Joint consultation committees are the formal framework for dialogue between management and employee representatives in the workplace.

The principles for information and discussion aim to establish a dialogue between the management that can/should make decisions covered by the duty to provide information and representatives of the employees affected by these decisions.

The purpose of the joint consultation committee is to qualify management's basis for decision-making with views, opinions and possible alternative proposals from employees before management makes decisions. This gives employees the opportunity to influence a proposed decision with insights and views they may have on the topic.

The central parties agree that discussions in the joint consultation committee shall be conducted in order to exchange views and establish a good dialogue between management and employee representatives, so that a potential agreement can be reached on the decisions covered by the provisions on information and discussion. Through dialogue in the joint consultation committee and the willingness of the parties to try to reach an agreement, employees can influence management's final decisions on the topic under discussion.

What is covered by management's duty to provide information?

The Cooperation Agreement states that both management and employee representatives have a duty to inform each other about circumstances that affect working conditions, staff matters and/or cooperation. The duty to provide information includes a right to discuss these matters as well.

In relation to management's duty to provide information and discuss, a distinction is made between decisions that are part of day-to-day management and operations (and are not covered by management's duty to provide information) and fundamental changes to day-to-day management and operations (which are covered by management's duty to provide information).

Clause 3(2) of the Cooperation Agreement also stipulates that management must specifically inform the joint consultation committee about:

1. Recent developments in the workplace and expected developments in activities and in the financial situation.
2. The current situation in the workplace and expected developments regarding

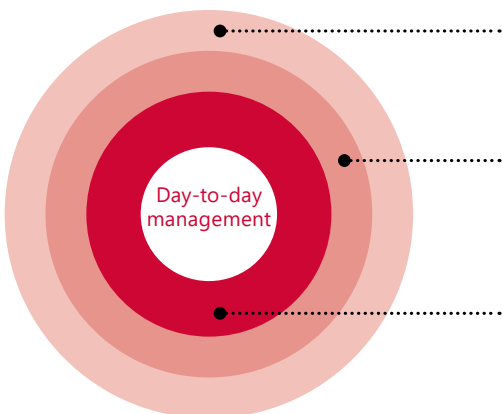
structure and employment, particularly in connection with structural changes and in situations where employment is threatened. Planned and expected initiatives must also be included in this context.

3. Other decisions that may lead to considerable changes in the planning of work and in the employees' terms and conditions of employment.
4. Expected decisions regarding calls for tender, renewed calls for tenders and outsourcing.

Matters governed by collective agreements and other agreements, including pay and employment conditions, are not subject to discussion in the joint consultation committee.

The Cooperation Agreement mentions a number of specific topics to be discussed in the joint consultation committee, cf. clause 5 of the Cooperation Agreement, where certain topics are closely related to what falls under management's duty to provide information, such as budget and appropriation.

The individual points of the management's special duty to provide information in clause 3(2) are elaborated upon below, followed by clauses describing how, where and when to provide information and discuss.



The legislative system

Legislation, orders and other political decisions (Salaried Employees Act, Holiday Act, Executive Order on health and safety etc.)

The collective bargaining system, the trade union representative system and contract law

Agreements about pay and conditions of employment (Holiday Agreement, Maternity Agreement, local pay agreements etc.)

The JCC system and managerial prerogatives

Management decisions and matters of importance to work conditions, staff matters and working relations.

Re. 1: Recent developments in the workplace and expected developments in activities and in the financial situation

Management's duty to provide information includes the institution's recent and expected developments in workplace activities and finances, including expected challenges or actual staff cuts.

Information to the joint consultation committee must also include the status and expected development of the institution's budget and finances. It is particularly relevant for management to provide information about expenses provided for in the budget as well as incurred expenses that relate to working conditions and staff matters, for example payroll, overtime and additional hours and competence development.

Re. 2: The current situation in the workplace and expected developments regarding structure and employment, particularly in connection with structural changes and in situations where employment is threatened. Planned and expected initiatives must also be included in this context.

In the joint consultation committee, management is obliged to provide information about and discuss the current situation and expected developments, including proposed structural changes and rationalisations that may have extensive consequences for employment conditions and organisation of work. Management must provide information about all proposed, planned and expected initiatives relating to changes in structural and employment conditions.

The information and discussion should help ensure that the proposed changes can be implemented in a way that minimises insecurity and uncertainty for employees.

Re. 3: Other decisions that may lead to considerable changes in the planning of work and in the employees' terms and conditions of employment.

Other decisions involving "considerable changes" in the planning of work include changes to the way work is done at the workplace, organisational changes, the introduction of new, major IT systems, relocation of all or parts of the workplace, merging with one or more other workplaces, outsourcing tasks to a private company, or when the state sells all or parts of state-owned companies.

Such changes can have a profound impact on an individual employee's working life. Therefore, the joint consultation committee must be informed well in advance to allow for thorough preparation for subsequent discussion in the joint consultation committee.

Re. 4: Expected decisions regarding calls for tender, renewed calls for tenders and outsourcing.

The joint consultation committee must be informed of expected decisions regarding calls for tender, renewed calls for tender and outsourcing of tasks and can, if necessary, help establish guidelines for employee representatives' participation in working or project groups etc.

Information about guidance material on tendering and outsourcing processes can be found on the website of the Secretariat for Cooperation ("Samarbejdssekretariatet").

Requirements for management's duty to provide information

When a proposed decision is covered by management's duty to provide information, management must make sure to inform the employee representatives about it. Information from management should primarily be in writing, for example, as an appendix to the individual agenda items at joint consultation committee meetings.

Verbal information is only given in exceptional cases and in cases where it has not been possible to produce written material due to time constraints, for example. If the employee side of the joint consultation committee wishes to discuss the topic in question in more detail, they are entitled to written information for preparation purposes. The discussion must therefore be postponed until the written information has been sent out.

The information should give the employee representatives the basis and opportunity to consult with their base and gather views, opinions and any alternative proposals that they can present at the joint consultation committee meetings.

It is therefore a requirement that information is provided to the employee representatives at an early stage with appropriate content and in a form that enables the employee representatives in the joint consultation committee to make an appropriate analysis and to consult their base and obtain additional information if necessary.

The information should be comprehensive enough for employee representatives to understand the consequences of the decisions the information suggests, but should not be so detailed that the information becomes incomprehensible.

The basic information and work with the employee base thus form the basis for discussion in the joint consultation committee,

where employees' views, opinions and any alternative proposals can be included in the basis for management decisions or recommendations for decisions.

Proportionality

The requirements in terms of the content of information and time must be proportionate to the importance of the decision in question. The greater the impact of changes on employee conditions, the more stringent the information requirements become. The higher requirements apply to both the level of detail of the information and the time employee representatives are given to consider the new information and to consult their bases prior to a discussion in the joint consultation committee.

Examples:

- 1) If management wants to implement major savings that will lead to redundancies, greater demands are placed in terms of basic information and the time employee representatives have for dialogue with their bases.
- 2) If management intends to restructure on a larger scale, this also places great demands in terms of basic information, as the decision may lead to considerable changes in the planning of work, even if the restructuring does not involve actual redundancies.

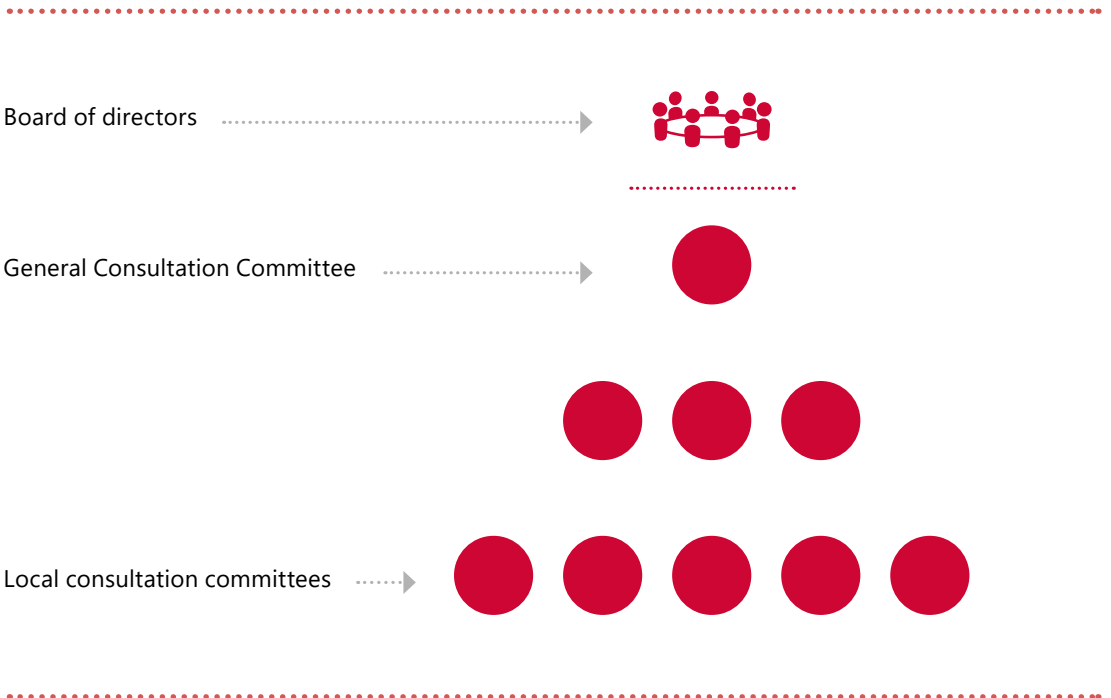
Right level

It is the management's responsibility to ensure that information is provided and that discussions take place at the right level – i.e. in the joint consultation committee where the management with the decision-making power is present.

This requires the joint consultation committee structure and management structure to match. If the institution does not have a joint consultation committee at the “right level”, information and discussions must take place in the higher-level joint consultation committee. If the institution has only one joint consultation committee, all information and discus-

sion of proposed decisions covered by the duty to provide information must take place there, regardless of whether or not the decision-making manager sits on this joint consultation committee.

A board of directors is not subject to management's duty to provide information. However, a recommendation to the board of directors that has an impact on working conditions, staff matters or cooperation is covered by the management's duty to provide information and must be considered by the joint consultation committee (with information and discussions) before the final recommendation from management is forwarded to the board.



Confidentiality

If all representatives in the joint consultation committee agree, the joint consultation committee may in certain situations consider agreeing to confidential discussions on a specific topic. It is crucial that this is done for a limited period of time and that an expiry date for the confidentiality is agreed upon. Management will not have fulfilled the duty to provide information until the confidentiality has ended and the employee representatives are able to consult their bases and have an open discussion in a joint consultation committee meeting.

It may be useful for management to communicate its proposed decisions more widely within the organisation before employee representatives involve their bases as a basis for subsequent discussion in the joint consultation committee.

Failure to fulfil the duty to provide information and discuss

In the event of a failure to fulfil the duty to provide information (clause 3(2) and (3) of the Agreement), the employee side can request that the duty is complied with in accordance with clause 15 of the Cooperation Agreement. Such a request must be submitted in writing. Management then has a time limit of one month from receipt of the request to take steps to fulfil its obligation.

This means that management must undo any decision that has already been made and allow time to provide information and discuss the proposed decision at a joint consultation committee meeting.

If management does not take steps to fulfil its obligation to provide information and subsequent discussion, a complaint can be lodged with the Joint Cooperation Board if there is broad support for this on the employee side of the joint consultation committee.

Joint Cooperation Board

The Joint Cooperation Board consists of six representatives with equal representation from each of the central parties.

The task of the Joint Cooperation Board is to handle and decide cases of interpretation and breach of the provisions of the Cooperation Agreement. In cases of breach of clause 3(2) and (3) of the Agreement, the Board may impose appropriate sanctions, such as a reprimand or a penalty.

Penalty

If a management has been penalised for non-compliance with the provisions of clause 3(2) and (3) of the Agreement, it will typically be a requirement that the penalty is used to promote cooperation in the workplace. However, this requires agreement in the joint consultation committee. If no agreement can be reached between the local parties in the joint consultation committee, the penalty amount will accrue to the central organisations.



Guidance on management's duty to provide information

Published 2024 by
Samarbejdssekretariatet
1000 Copenhagen, Denmark
T 7027 2321
www.samarbejdssekretariatet.dk

Graphic design: Karen Krarup