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# Employee Trustee Act<sup>1</sup>

Passed 13 December 2006

(RT<sup>2</sup> I 2007, 2, 6),

entered into force 1 February 2007.

## Chapter 1

### General Provisions

#### § 1. Scope of application of Act

(1) This Act regulates the activities of employee trustees (hereinafter trustees) in the representing of the employees and public servants (hereinafter employees) who authorise the trustees in relations with employer and the employees.

(2) For the purposes of this Act, state or local government agencies are employers in public service.

#### § 2. Trustee

(1) A trustee is an employee of an employer who is elected by a general meeting of the employees of the employer (hereinafter general meeting) to represent the employees in the performance of the duties arising from law in relations with the employer.

(2) A trustee is deemed to be the employee trustee within the meaning of the Republic of Estonia Employment Contracts Act.

### § 3. Right of representation of trustee

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

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

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

## Chapter 2

### Election and Authority of Trustee

### § 5. Calling general meeting

(1) The following may call the general meeting:

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

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

#### § 6. Quorum of general meeting

A 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 procedure for the election and removal of a trustee.

(2) The conditions and 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. All employees and the trade union operating at the employer may present candidates for trustee.

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

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

(6) The general meeting shall 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

The term of authority of the trustee is three years unless the general meeting has decided otherwise.

### Chapter 3

#### Rights and Obligations of Trustee

#### § 9. Rights of trustee

A trustee has the right to:

- 1) examine freely the working conditions, including the organisation of work;
- 2) receive the information necessary for the performance of his or her duties from the employer and consult the employer on the basis of such information;
- 3) suspend the collective termination of employment contracts under the conditions provided for in subsection 89<sup>3</sup> (6) of the Republic of Estonia Employment Contracts Act;
- 4) conduct negotiations with the employer for entering into 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 working at 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 working at the employer;
- 6) to notify the interested trade union and association or central association of employers and trade unions of violation of working conditions by the employer;
- 7) have recourse to labour dispute resolution bodies for resolution of disputes arising from the confidentiality of the information obtained or refusal to provide information;
- 8) receive the training for the performance of his or her duties pursuant to the procedure provided for in § 14 of this Act;
- 9) involve experts in the performance of his or her duties;
- 10) upon agreement with the employer, use the premises of the employer and other resources necessary for the performance of the duties of a trustee.

## § 10. Duties 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 avoiding of disruption of work if the trustee has entered into a collective agreement under the conditions and pursuant to the procedure provided for in the Collective Agreements Act;
- 6) co-operate with the shop-steward, the working environment representative or 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 termination of authority, personal data which become known to him or her in the course of performance of his or her duties or any information which the employer has expressly provided to him or her in confidence.
- (2) A trustee shall not unlawfully use, during the term of authority or after termination of authority, personal data which become known to him or her in the course of performance of his or her duties or any information which the employer has expressly provided to him or her in confidence.
- (3) The obligations specified in subsections (1) and (2) of this section do not apply to the communication of the trustee with another trustee elected at the same employer and with 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 apply to experts involved in consulting.

(2) The obligations specified in subsections 11 (1) and (2) of this Act do not apply to the communication of an expert with another trustee elected at the same employer.

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

#### § 13. Period of performance of duties of trustee

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

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

(3) An employer shall allow the trustee to perform his or her duties during working time:

1) if the trustee represents 5 to 100 employees – a minimum of 4 hours per working week;

2) if the trustee represents 101 to 300 employees – a minimum of 8 hours per working week;

3) if the trustee represents 301 to 500 employees – a minimum of 16 hours per working week;

4) if the trustee represents more than 500 employees – a minimum of 40 hours per 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.

## Chapter 4

### Obligations and Rights of Employers in Provision of Information

#### § 15. Obligations and rights of employers in provision of confidential information

- (1) Any information which the employer expressly provides to the trustee 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 why the provision of 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 do not apply to the 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 reports;
  - 2) when the obligation of informing and consulting specified in subsection 20 (1) of this Act arises.
- (2) Upon determining of 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 of informing and consulting arises.

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

- (1) "Informing" means the informing of the trustees or, in his or her absence, the employees on an appropriate level which allows the employees to receive a clear and sufficiently detailed overview of the structure and economic and employment situation of

the employer on time, and the possible development of the structure and situation and other circumstances affecting the interests of employees, and to understand the effects of the situation and other circumstances on the employees.

(2) "Consulting" means exchange of views and the establishment of 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 receive reasoned responses to the expressed opinions from the employer with a view to 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, changes therein and planned decisions which significantly affect the structure of the employer and the staff;
- 2) planned decisions which are likely to bring about substantial changes concerning organisation of work;
- 3) planned decisions which are likely to bring about substantial changes concerning the employment contract relationships of employees, including termination of the employment relationship.

(2) The employer shall inform of annual reports prepared pursuant to the Accounting Act not later than within fourteen days after approval of the annual report.

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

- (1) Employers shall provide information in a manner which enables in depth examination of the information and, if necessary, preparation 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) The 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 fifteen working days as of the date of 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 receipt of the request for consulting.
- (4) The employer shall explain the activities planned for consulting and the consequences thereof for the employees. The parties shall seek to reach an agreement in 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 §§ 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 Republic of Estonia Employment Contracts Act.

#### § 23. Challenge proceedings regarding precepts

The provisions of the Republic of Estonia Employment Contracts Act apply to challenge proceedings regarding precepts.

### Chapter 7

#### Liability

#### § 24. Violation of obligation of informing and consulting

(1) Failure to perform the obligation of informing or consulting or submission of false information by an 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 50 000 kroons.

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

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

#### § 26. Procedure

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

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 24 and 25 of this Act shall be conducted by the Labour Inspectorate.

## Chapter 8

### Implementation of Act

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

The term of authority of the elected trustees continues until the expiry of their term of authority, however for not longer than one year as of the entry into force of this Act.

#### § 28. Amendment of Trade Unions Act

The Trade Unions Act (RT I 2000, 57, 372; 2002, 63, 387) is amended as follows:

1) subsection (4) shall be added to § 16 in the following wording:

„(4) An elected shop-steward who is an employee of the employer and performs the duties of an elected representative specified in § 21 of this Act (hereinafter shop-steward) is deemed to be the representative of employees within the meaning of the Republic of Estonia Employment Contracts Act.”;

2) Clause 6) of Section 17 is amended and reworded as follows:

„6) participation in the consulting and informing of employees through the shop-steward pursuant to the procedure provided by this Act;”;

3) Clause 20 (1) 1) is amended and worded as follows:

„1) grant a workroom for the trade union, if possible;”;

4) Clause 21 (1) 2) is amended and worded as follows:

„2) notify the employer in writing of the given names and surnames, positions and terms of authority of the shop-steward and the members of the management board of the trade union;”;

5) clause 21 (1) 6) is repealed;

6) Clause 21 (1) 7) is amended and worded as follows:

„7) co-operate with the employee trustee, the working environment representative or working environment council;”;

7) section 21<sup>1</sup> is added to the Act worded as follows:

„§ 21<sup>1</sup>. Period of performance of duties of shop-steward

(1) The shop-stewards shall, upon agreement with the employer, perform his or her duties during working time or outside of working time.

(2) An employer shall allow at least one shop-steward to perform his or her duties during working time:

1) if the representative represents 5 to 100 members of the trade union who are employed at the employer – a minimum of 4 hours per working week;

2) if the representative represents 101 to 300 members of the trade union who are employed at the employer – a minimum of 8 hours per working week;

3) if the representative represents 301 to 500 members of the trade union who are employed at the employer – a minimum of 16 hours per working week;

4) if the representative represents more than 500 members of the trade union who are employed at the employer – a minimum of 40 hours per working week.

(3) The trade union shall inform the employer of the number of the members of the trade union who are employed at the employer for the grating of the period prescribed for the performance of the duties of a shop-steward.”;

8) subsection (22) is amended and worded as follows:

„§ 22. Participation of shop-steward in informing and consulting

(1) An employer shall inform the shop-steward and consult him or her under the conditions and pursuant to the procedure prescribed in §§ 17–21 of the Employee Trustee Act.

(2) The shop-stewards are required to communicate the received information to employees.

(3) The provisions of the Employee Trustee Act apply in the receipt and maintaining of confidential information and in the event of refusal to provide information and in the performance of the obligation of informing and consulting.”;

9) the Act is amended by adding Chapter 5<sup>1</sup> worded as follows:

“Chapter 5<sup>1</sup>

State Supervision

§ 24<sup>1</sup>. Exercise of state supervision



State supervision over compliance with the requirements provided for in subsections 21<sup>1</sup> (2) and (3) of this Act shall be exercised by the Labour Inspectorate under the conditions and pursuant to the procedure provided for in the Republic of Estonia Employment Contracts Act.

#### § 24<sup>2</sup>. Procedure for challenging precepts

The provisions of the Republic of Estonia Employment Contracts Act apply to challenge proceedings regarding precepts.”;

10) section 26<sup>3</sup> is amended and worded as follows:

„§ 26<sup>3</sup>. Violation of obligation of informing and consulting

Failure to perform the obligation of informing or consulting or submission of false information by an employer shall be punished under the conditions and pursuant to the procedure prescribed in §§ 24 and 25 of the Employee Trustee Act.”;

11) section 26<sup>4</sup> is amended and worded as follows:

„§ 26<sup>4</sup>. Failure to perform obligations of elected members of trade unions in relations with employers

An elected shop-stewards who fails to ensure avoidance of disruption of work during a period prescribed by law or a collective agreement shall be punished by a fine of up to 100 fine units.”;

12) section 26<sup>6</sup> is repealed;

13) section 26<sup>7</sup> is added to the Act worded as follows:

„§ 26<sup>7</sup>. Violation of obligation to maintain confidentiality of information

Violation of the obligation to maintain the confidentiality of information by a shop-steward shall be punished under the conditions and pursuant to the procedure prescribed in §§ 25 and 26 of the Employee Trustee Act.”;

14) section 26<sup>8</sup> is added to the Act worded as follows:

„§ 26<sup>8</sup>. Procedure

(1) The provisions of the General Part of the Penal Code and the Code of Misdemeanour Procedure apply to the misdemeanours provided for in §§ 26<sup>1</sup>, 26<sup>2</sup>, 26<sup>4</sup> and 26<sup>5</sup> of this Act.

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 26<sup>1</sup>, 26<sup>2</sup>, 26<sup>4</sup> and 26<sup>5</sup> of this Act shall be conducted by the Labour Inspectorate.”

#### § 29. Amendment of Republic of Estonia Employment Contracts Act

The Republic of Estonia Employment Contracts Act (RT 1992, 15/16, 241; RT I 2006, 31, 236) is amended as follows:

1) clause 55 5) is amended and worded as follows:

„5) during the time that the employee performed duties imposed upon him or her by a state or local government authority, or represented employees in the cases prescribed by law or a collective agreement;”;

2) subsection 94 (1) is amended and worded as follows:

„(1) Termination of an employment contract on the initiative of an employer with an employee who is elected to represent employees is permitted during the term of authority of the employee and within one year after termination of the authority only with the consent of the labour inspector of the seat (residence) of the employer, except on the bases prescribed in clauses 86 1), 9) and 11).”

### § 30. Amendment of Wages Act

Sections 30<sup>1</sup> and 30<sup>2</sup> are added to the Wages Act (RT I 1994, 11, 154; 2005, 39, 308) in the following wording:

„§ 30<sup>1</sup>. Guarantee for period of performance of duties of trustee and for period of training

Payment of average wages to the trustee shall be continued throughout the period of performance of the duties of a trustee and the period of training.

§ 30<sup>2</sup>. Guarantee for period of performance of duties of shop-steward

Payment of average wages to the shop-steward shall be continued throughout the period of performance of the duties of a shop-steward pursuant to § 21<sup>1</sup> of the Trade Unions Act.”

### § 31. Repeal of Employee Trustee Act

The Employee Trustee Act (RT I 1993, 40, 595; 2002, 111, 663) 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, p. 29–34).

<sup>2</sup> RT = *Riigi Teataja* = *State Gazette*