

Instruction for personnel representation

The Co-operation Act (1333/2021) is based on representativeness, and some of the provisions apply only if employees have elected a personnel representative from among themselves. The starting point is that both dialogue and change negotiations take place between the employer and the personnel representatives. The Co-operation Act that entered into force on 1 January 2022 largely corresponds to its predecessor, the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007), in terms of personnel representation, and the views adopted earlier in this regard are still relevant.

Section 5 of the Co-operation Act provides for the representation of personnel. The personnel representatives in accordance with the Co-operation Act are the shop steward, the elected representative and the co-operation representative. In addition, a personnel representative in accordance with the Co-operation Act may also refer to an occupational safety and health representative if the matter concerns the safety and health of employees. However, the shop steward, if one has been elected, acts as the primary representative. If a personnel group has not elected a representative or an ad hoc representative elected for a specific negotiation event, the procedures under the Co-operation Act must be carried out together with all employees in the personnel group.

Personnel representatives by personnel group

Personnel representatives are selected by personnel group. It is an established practice to consider manual workers, salaried employees, higher-ranking salaried employees and management as separate personnel groups. As a rule, the division into personnel groups is based on the location of work tasks in the company's organisation. Different personnel groups are generally subject to different collective agreements. However, more than one collective agreement may be applied within one personnel group. In addition to the fact that a single personnel group may include persons subject to different collective agreements and members of different trade unions, the personnel group may also include non-union employees. The unionisation of employees does not affect their personnel group. In companies where no collective agreement applies, the concept of personnel group is relatively flexible. In this case, the structure of the personnel can be relevant. The aim is that a personnel group, in terms of its position and size, forms an entity that is relevant to the exercise of cooperation (HE 39/1978, p. 7).

If several collective agreements are applied within a personnel group, several shop stewards may be elected within the same personnel group on the basis of different collective agreements. One personnel group may also have several personnel representatives if the majority of the personnel group has not had the right to participate in the election of the shop steward and they have exercised their right to elect a co-operation representative from among themselves in accordance with section 5, subsection 2 of the Co-operation Act.

The election of the personnel representative is the responsibility of the personnel. The employer cannot interfere in the election procedure or seek to influence the outcome. The employer may only provide a setting for organising the election, for example in the form of premises, or encourage employees to exercise their right to elect their own representative(s).

Election, acceptance and scope of representation of the shop steward

As a rule, employees belonging to a union that has entered into a collective agreement may participate in the election of the shop steward. Conducting the election is an internal matter for each trade union and is based on the provisions of the collective agreement. The most important thing is to ensure that all unionised workers have been able to take part in the election. The shop steward position can be considered to be

created from the moment the employer is notified of the election result in writing. As a rule, the employer can trust the notification provided to it, and the employer does not have the right to refuse to accept the elected shop steward, at least in situations where the election is based on a collective agreement binding on the employer.

The situation becomes more problematic if the employer is non-union and complies with the collective agreement on the basis of universal applicability. The Co-operation Act uses the term ‘shop steward elected in accordance with the relevant collective agreement.’ The act does not specify whether ‘the relevant collective agreement’ refers only to a collective agreement that is binding under the Collective Agreements Act or whether a shop steward position can also be created on the basis of a collective agreement that is complied with based on universal applicability. On the basis of preliminary work concerning the Employment Contracts Act (HE 157/2000, pp. 123–124) and precedents issued by the Supreme Court (KKO 1991:174, KKO 2001:119), it is also possible to elect a shop steward for a non-union employer’s workplace on the basis of a universally applicable collective agreement if the universally applicable collective agreement contains provisions concerning the election of a shop steward. Legal literature (Paanetoja–Salminen, *Uudistunut yhteistoimintalaki* (“Reformed Co-operation Act”), pp. 51–52; Paanetoja, *Luottamusmies 2020-luvun työpaikalla* (“Shop steward in the workplace of the 2020s”), pp. 33–35 and Hietala–Kaivanto, *Uusi yhteistoimintalaki käytännössä* (“The New Co-operation Act in Practice”), pp. 72–73) has also examined whether a non-union employer must accept a shop steward elected on the basis of a universally applicable collective agreement and his/her acting as a personnel representative. The latest Supreme Court precedent (KKO 2022:35) makes it clear that, at least in situations where the employer has once accepted a shop steward, the acceptance cannot be withdrawn afterwards.

The Government proposal concerning the Co-operation Act (HE 159/2021, pp. 67–68) reveals that the scope of the right of representation of a shop steward elected on the basis of a collective agreement extends, as a rule, to those employees who fall within the scope of application of the collective agreement, regardless of whether they are members of the trade union that entered into the collective agreement or not. The elected shop steward thus represents all employees within the scope of the collective agreement in matters under the Co-operation Act, including those who are not members of the union that entered into the collective agreement but who are within the scope of the collective agreement. However, in situations where some of the employees in the personnel group have elected a cooperation representative, the shop steward will only represent the employees who belong to the trade union on the basis of which he or she was elected. The other employees in the personnel group will be represented by the cooperation representative. If there are several collective agreements applicable within the personnel group, each shop steward will represent the segment of the personnel to which their respective collective agreement applies.

Other personnel representatives pursuant to the Co-operation Act

Employees may elect an elected representative in accordance with chapter 13, section 3, subsection 1 of the Employment Contracts Act from among themselves if a personnel group does not have a shop steward in accordance with the collective agreement. The background may be, among other things, that no collective agreement is applied to the personnel group in question or that the applicable collective agreement does not contain provisions on a shop steward. The elected representative may be elected for a specific personnel group, but it is also possible to agree that the elected representative represents all personnel. It is essential that all employees who are to be represented by the elected representative have the opportunity to participate in his or her election. The employer should be notified after a representative has been elected.

The elected representative may be equated with a shop steward with regard to the duties of the personnel representative. However, the consequence of the elected representative’s subsidiarity in relation to the shop steward is that if the employees later elect a shop steward, the elected shop steward will supplant the

elected representative they had previously elected. Situations may arise in which a shop steward elected by a minority supplants an elected representative elected by a majority. In addition, an elected representative may not be elected if a shop steward has already been elected. (Äimälä–Kärkkäinen, Työsopimuslaki 2017 (“The Employment Contracts Act of 2017”, pp. 680–683))

In addition to what is stated above about the right of the majority of the personnel group to elect a special cooperation representative from among its members, a cooperation representative may also be elected in situations where employees have not elected a shop steward or an elected representative even if they would have been entitled to do so (Co-operation Act, section 5, subsection 3). The reasons for not electing one are irrelevant. The election must be conducted within the personnel group in such a way that all members of the personnel group have the opportunity to participate in the election. The election procedure itself is not regulated. The election of a cooperation representative elected by a majority of any personnel group (Co-operation Act, section 5, subsection 2), on the other hand, is the responsibility of only the employees belonging to the majority. Everyone belonging to the majority must have an opportunity to take part in the election. The Cooperation Ombudsman has issued [separate guidelines](#) on the calculation of the majority.

Occasionally, situations arise in the practice of the Cooperation Ombudsman where the occupational safety and health representative, as the only personnel representative, has participated in change negotiations. In matters related to the safety and health of employees, ‘personnel representative’ also refers to the occupational safety and health representative, and the matters discussed in change negotiations may have an impact on those matters, but the occupational safety and health representative does not have a position that would allow him or her to represent personnel alone in matters other than those concerning occupational safety and health. The occupational safety and health representative may participate in the negotiations alongside other personnel representatives or may act as a personnel representative there if he or she has been separately authorised to do so. In this case, the scope of representation is determined by the limits of the authorisation granted.

When there is no regular personnel representative

If a regular personnel representative has not been elected either by an individual personnel group or by the entire personnel, a representative may also be elected for individual change negotiations or dialogue events. However, this representative is not a cooperation representative within the meaning of the Co-operation Act. The powers of the situational or ad hoc representative are limited to representation in the procedure for which he or she has been elected. If the solution is to be more permanent, the employees must elect a regular cooperation representative from among themselves. The ad hoc representative represents only the employees who elected him or her. If not even an ad hoc representative has been elected, a dialogue must be held with the entire personnel, and any change negotiations must be held with all the employees affected by the planned measures.

Representativeness as a starting point

When considering the parties to negotiations, it is good to keep in mind that, if the employees have elected a personnel representative or personnel representatives from among themselves, the employer cannot conduct change negotiations/dialogue directly with the employees; the negotiations must be conducted in a representative manner with the representative of the personnel group in question. Only when the change negotiations concern deliberate measures directed at an individual employee or individual employees, the negotiations may, exceptionally, be conducted directly between the employer and the employee(s) concerned (Co-operation Act, section 18, subsection 2). Even in this case, a personnel representative may be present at the negotiations or the negotiations may be held with a personnel representative. In the practice

of the Cooperation Ombudsman, 'individual employees' has been considered to mean two to five employees. If a negotiated procedure has been conducted with elected personnel representatives, it is no longer necessary to later negotiate with individual employees on the same issue. Negotiations at different levels are mutually exclusive.