



CHAMBRE DES SALAIRES  
LUXEMBOURG

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# Labour Law

## Social dialogue in companies

New legal provisions as from 1 January 2016 / after 2018 social elections

*Employee delegations*

*Joint works councils*

*Employee representatives in public limited companies*



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# PREFACE



*Jean-Claude Reding  
President of the Chambre des salariés*

A long-awaited reform has just been completed.

The law dated 23 July 2015 for the reform of social dialogue within companies<sup>1</sup> is imposing a number of major new rules that will govern the social dialogue processes in companies.

A part of the legal modifications will go into effect on 1 January 2016. Others will only go into effect from the next social elections in 2018.

This is therefore CSL's opportunity to republish its work on the representational structures for employees in companies operating in the country.

This publication is intended as a guide whose purpose is to provide the fullest range of information possible to both employees and employee representatives, highlighting the new aspects and the date each of them enters into effect.

The publication features a two-tiered structure:

- The first level is an overview of the main modifications under the new legislation, which consists of a few pages covering what will change.
- The second level is a practical guidebook of the provisions taking effect as from 2016 respectively as from 2018, with detailed explanations of the new rules.

For those who wish to follow the course of modifications over time or review the legal basis of the new provisions, CSL is also publishing an expanded version of the two parts of this work, supplemented by a comparison between the former legislation and that applicable as from 2016 respectively as from 2018, as well as a coordinated text of the new legislation.

Luxembourg, October 2015

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<sup>1</sup> *Mémorial A no 144 dated 27 July 2015*



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**PART**



**OVERVIEW OF THE MODIFICATIONS  
INTRODUCED BY THE NEW  
LEGISLATION**





# OVERVIEW OF THE MODIFICATIONS INTRODUCED BY THE NEW LEGISLATION

Here is a review of the major modifications and new elements appearing with the law dated 23 July 2015.

**Note:** In case we did not otherwise state so, these enter into effect as from 1 January 2016.

## **Establishing employee delegations: All new employee delegations established from 1 January 2016 will be embedded at company level, and no longer at the level of one of a company's establishments**

Delegations currently operating out of one of a company's establishments will remain in place until the 2018 social elections. Only after these elections will delegations be incorporated at the main company level in all companies, and no longer at the level of any establishments of that company.

It should be noted that all new delegations to be established after 1 January 2016 and prior to the 2018 social elections will be incorporated at company level.

In this way, employee delegations are situated at company level, regardless of the type of business, sector or legal form of a company. This type of company should employ, as is the case currently, at least 15 employees who are bound to it through a work contract for the 12 months prior to the first day of the month in which elections are announced.

These same rules apply equally to employers organised under public law, which over this same reference period employ persons with a status of employees under private law, who are therefore bound to this employer by a work contract under private law.

Note that while the condition requiring employees to have been working during the 12 months prior to the first day of the month in which elections are announced is not new, but in future will be a direct result of the law itself.

## **Central delegations, divisionary delegations, young Employee delegations and joint works councils will be eliminated beginning from the upcoming 2018 elections. A delegation will be established at the level of an economic and social entity**

Incorporating delegations at company level goes hand in hand with establishing a new level of delegation at the economic and social level, although also with eliminating central and divisionary delegations, a phase that will not be achieved until after the 2018 elections. Likewise, the Young Employees' delegation will be eliminated with the next social elections.

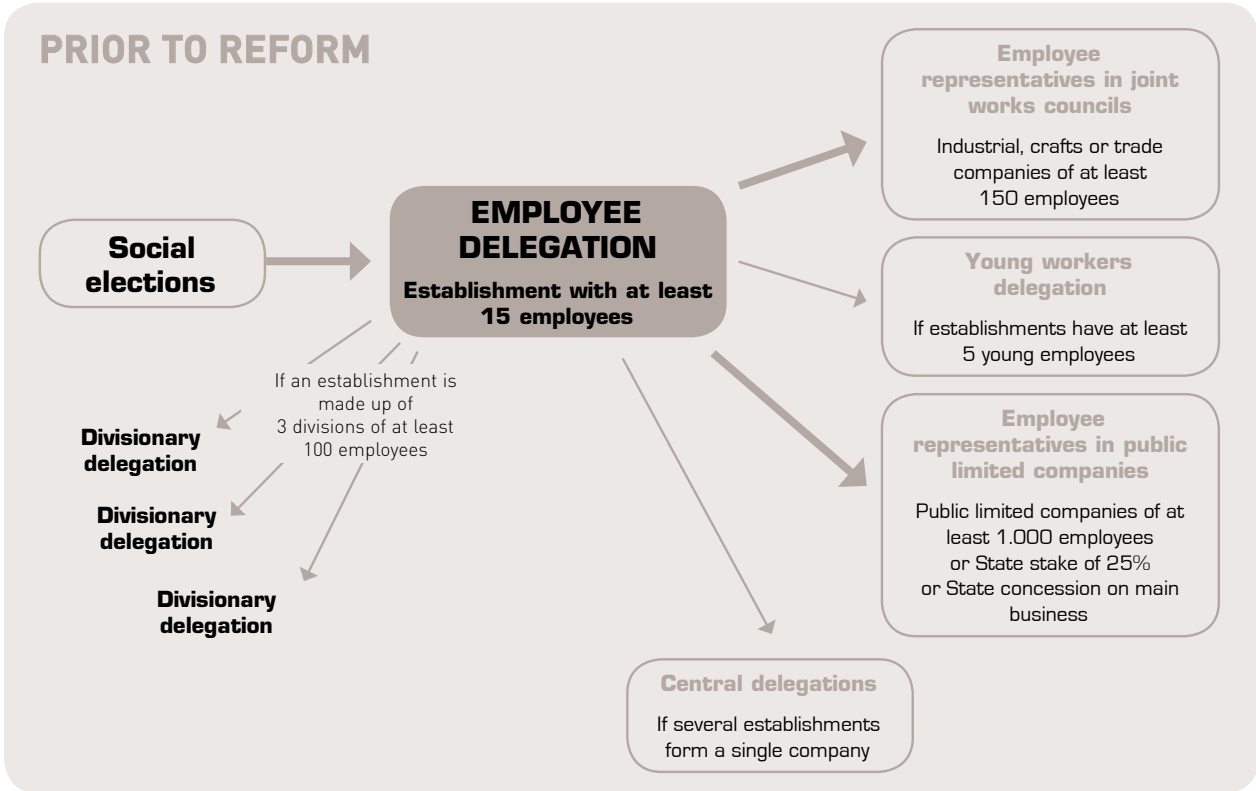
With the 2018 elections, the existing joint works councils will cease to exist. At that point, only the following will be in place:

- Employee delegations in companies in which at least 15 employees were working for the 12 months prior to the first day of the month in which elections are announced.
- Delegations at the economic and social entity level, where several companies make up an economic and social entity as stipulated in article L.161-2 of the Labour Code.

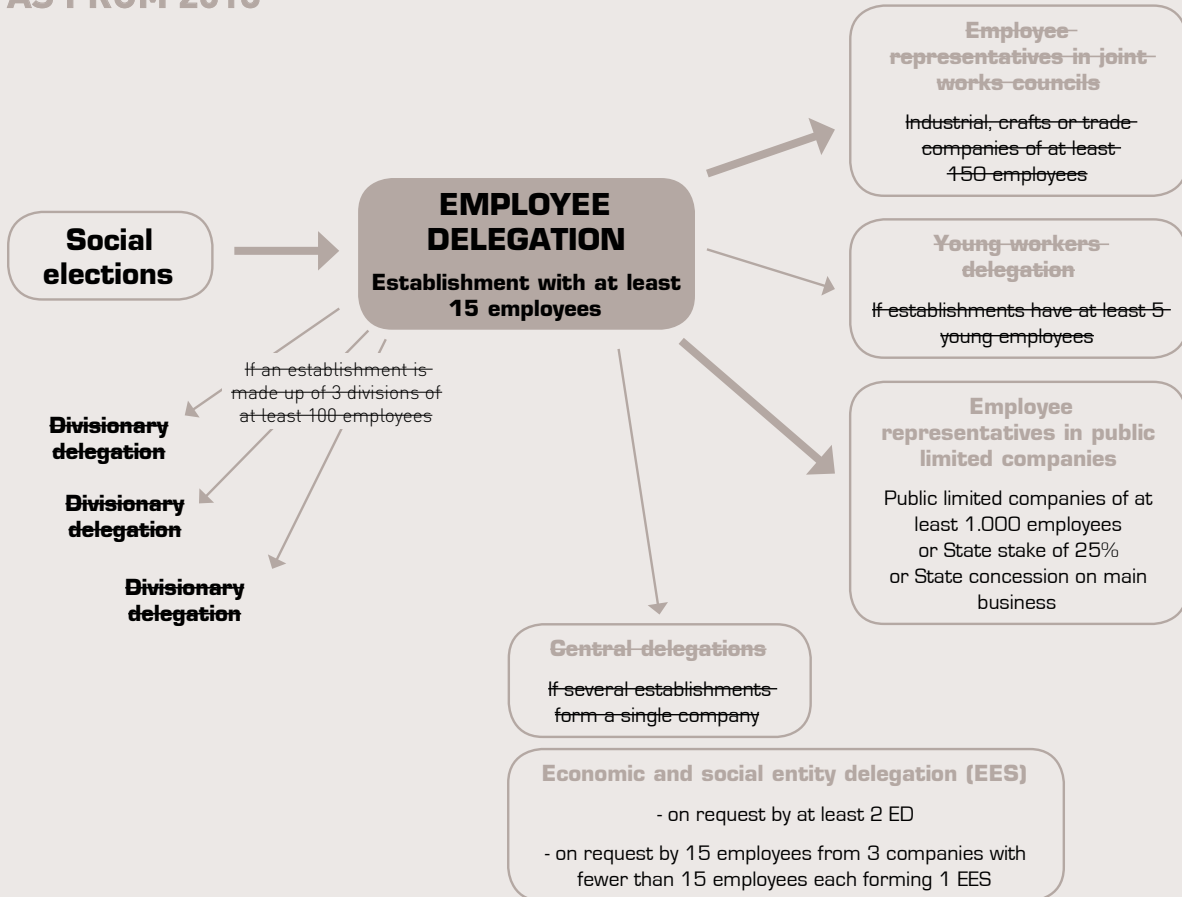
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## Overview of the main modifications by the new legislation

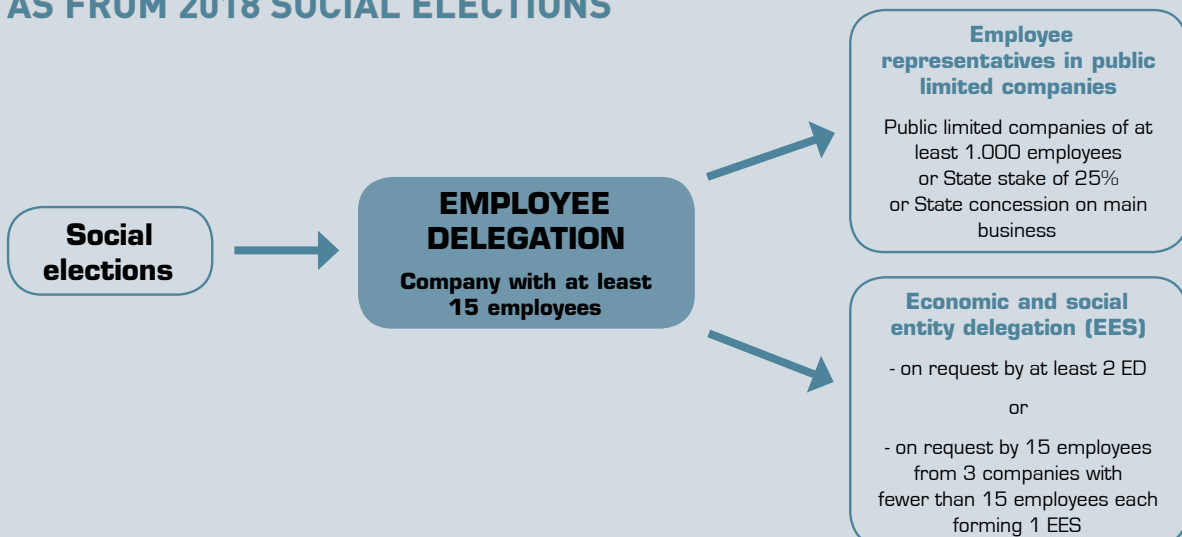
According to article L.161-2 of the Labour Code, "The expression 'company making up an economic and social entity' means a group of entities, even with autonomous and/or distinct legal personalities or operating as a franchise, that feature one or several elements from which it may be concluded that they are not independent and/or autonomous units, but are manifestly a concentration of management powers and identical and complementary businesses, or a community of employees linked by identical, similar or complementary interests, with a comparable social status. All available elements are taken into consideration in evaluating whether an economic and social entity exists, to include having shared or complementary structures or infrastructures, having a shared, complementary or coordinated strategy, having one or several economic beneficiaries that are totally or partially identical, complementary or inter-related, having shared, complementary or inter-related management or shareholding structures, or management, direction or control entities made up wholly or partially of the same persons or persons representing the same organizations, or having a community of employees linked by shared or complementary interests or that feature a similar or related social status. Several establishments functioning under an identical or very similar emblem, including under a franchise scheme, are supposed to make up an economic and social entity in the meaning of this article."



## MODIFICATIONS UNDER THE LAW DATED 23 JULY 2015 AS FROM 2018



## AS FROM 2018 SOCIAL ELECTIONS



### Replacement of delegations: Trade unions will have their say

The Ministry of Labour may fully replace an employee delegation when there are insufficient numbers of full members on the list and there are no alternate members available to sit on vacant seats. The new law states that this will be done only in accordance with the input of trade unions with general nationwide or sector representation, and who are represented in the elected delegation.

### A more precise procedure in addressing lack of candidates

Should no candidates stand for seats, the Ministry of Labour designates the full and alternate members from amongst eligible employees in a company.

The new law provides further clarification by adding the following elements: Should no candidates stand for election, the company CEO or that person's nominee shall prepare a report to be submitted no later than the date of elections to the Labour and Mines Inspectorate, who shall conduct a survey within the company.

On recommendation of the Labour and Mines Inspectorate, the full delegates and any alternates are automatically designated by the Ministry of Labour from amongst the eligible employees of a company<sup>2</sup>, within two months following the elections.

### Youths aged at least 16 years can actively vote

In view of the elimination of the Young Employees delegation, active voting rights (i.e. the ability to vote) are granted to employees aged at least 16 years. Thus, the age limit is reduced from 18 to 16.

### Founding meeting for delegations and establishment of a delegation board

The new text taking effect after the 2018 social elections includes certain clarifications and modifications that are **bold** in the text below:

#### Founding meeting

The founding meeting is called by the employee representative **who obtained the highest number of votes in elections during the month following polling.**

**If no elections are held, the founding meeting shall be called by the eldest full delegate in the same manner.**

**During this meeting**, employee delegations designate a President, a Vice-President and a Secretary from amongst its full members by means of a secret ballot, and according to relative majority rules. In the event of a tie, the eldest candidate is elected.

**A Grand Duchy regulation shall determine the mandatory agenda items in order for founding meetings as well as the conduct of the meeting.**

<sup>2</sup> This is most likely an error in the text of the law dated 23 July 2015; the term "establishment" must certainly be substituted by "company".

## Board

A board is established within employee delegations for dispatching routine business and preparing for meetings, to be designated from amongst its **full** members by secret ballot, by list and according to the rules of proportional representation, to be made up of the following, **in addition to the President, the Vice-President and the Secretary**:

- 1 member, where the delegation is made up of at least 8 members
- 2 members, where the delegation is made up of at least 10 members
- 3 members, where the delegation is made up of at least 12 members
- 4 members, where the delegation is made up of at least 14 members.

PRIOR TO REFORM		AS FROM 2018 SOCIAL ELECTIONS	
Numerical composition	Makeup of Bureau	Numerical composition	Makeup of Bureau
Fewer than 9 members	President, Vice-President and Secretary	Fewer than 8 members	President, Vice-President and Secretary
Between 9 and 11 members	President, Vice-President and Secretary + 3 members	8 or 9 members	President, Vice-President and Secretary + 1 member
Between 12 and 15 members	President, Vice-President and Secretary + 5 members	10 or 11 members	President, Vice-President and Secretary + 2 members
Between 16 and 21 members	President, Vice-President and Secretary + 7 members	12 or 13 members	President, Vice-President and Secretary + 3 members
22 members or more	President, Vice-President and Secretary + 9 members	14 members or more	President, Vice-President and Secretary + 4 members

The board is increased by at least one employee delegate to assume its new duties in the area of participating in certain company decisions, proportionate to votes obtained by each list of candidates represented in the employee delegation that is not yet represented in the board.

The delegation President shall submit the names of the Vice-President, the Secretary and those of the board members to the company director and to the Labour Inspectorate within 3 days of the founding meeting.

During the first meeting following the founding meeting of the employee delegation, elected members are informed by the company director of the company's organisational structure, of any ties it has with other companies, of foreseeable economic changes, employment structure, professional continuing education policies, health and safety on the job and policies for equal treatment of employees.

## New responsibilities for the safety delegate

From now on this person will be called the Health and Safety delegate, as the job has been extended to include the health aspect. The new law stipulates that these delegates must be informed and consulted to evaluate any risks the company may be facing in conducting its business, pertaining to both the environment and health and working conditions. The same is true for measures taken for environmental protection, in as much as the health and working conditions of employees are concerned.

In this area, we note that the law has eliminated the prior agreement of the employer on inspection visits for temporary work sites in companies of fewer than 150 employees.

The company director and the Labour and Mines Inspectorate shall be informed in writing with regard to the appointment of the Health and Safety delegate within 3 days.

## Overview of the main modifications by the new legislation

The new law also stipulates that where a Health and Safety delegate is not an elected member of the delegation, that person may attend all concerned delegation meetings in an advisory capacity.

This person shall have increased basic training rights; till now, the law provided for 8 hours of training, plus a specialist course set by a Grand Duchy regulation for the person's entire term. Now there will be 40 hours of training per term, with ten additional hours for initial terms in a given company.

### New responsibilities for the Equality delegate

The new law adds several stipulations:

- Equality delegates must be designated at delegation founding meetings
- The Equality delegate may be appointed from amongst full and alternate delegation members
- The company director and the Labour and Mines Inspectorate must be informed of the appointment in writing within 3 days.

The equality delegate will now participate in preparing and carrying out the entire range of initial professional training, especially apprenticeships, as is done now.

### More rights for delegations in selecting advisors and experts

The new law calls for a series of changes and improvements in this area:

#### Advisors

The law no longer distinguishes between companies with fewer or more than 150 employees. From now on, the distinction will involve two thresholds, the first for companies with **more than 50 employees** and the second for those **with more than 150**.

In companies where at least 51 employees have been working for the 12 months prior to the first day of the month in which elections are announced advisors may participate in employee delegation meetings in an advisory capacity, whether or not they are working in the company, provided a majority of delegates request this. The number of advisors may not exceed one third of the delegation members.

- **In companies where between 51 and 150 employees** have been working for the 12 months prior to the first day of the month in which elections are announced, the trade unions who have general nationwide or sector representation and who are represented by at least 1/3 of full elected members may recommend advisors.
- **In companies where over 150 employees** have been working for the 12 months prior to the first day of the month in which elections are announced, the trade unions who have general nationwide or sector representation and who have obtained at least 20% of elected members at the most recent elections, if necessary, may as an exception to the rule of not exceeding 1/3 of elected members in a delegation may each recommend one of the advisors.

In companies with more than 50 employees, the delegation appoints the advisors who will be permitted to attend delegation meetings, based on the recommendations submitted to it in accordance with the preceding paragraphs.

If the total number to be appointed exceeds that of advisors thus appointed, the employee delegation may approve additional advisors provided they do not exceed one third of the delegation members.

To this end, the unions who have general nationwide or sector representation and who are represented by at least one third of full elected members may recommend advisors.

#### Use of employer and trade union organisations

In all companies with employee delegations, including companies with fewer than 50 employees, the delegation may decide upon request by the delegates or the company director to submit selected issues to a joint review by a professional employer's organisation or a trade union with general nationwide or sector representation.

## Experts

Although the current law does not provide for this, the delegation may decide to designate an outside advisor if it believes that the issue is decisive for the company or its employees. Unless otherwise provided, the cost to companies for an expert is limited to one expert and may not exceed a certain percentage of the total annual payroll per expert and per year, as stated by employers to the Joint Social Security Centre during the year preceding the decision on the mandate, to be determined by Grand Duchy regulation. The company director must be informed previously with regard to the type of mandate given.

## Greater facility for employee delegates in leaving their workstations

The new law eliminates the requirement of employer approval of delegate movements. Now the employer will simply be informed of a delegate's absence.

As such, employee delegates have the right to leave their workstation without reduction in pay as necessary to perform tasks assigned to them after informing the company director, provided that their absence does not impede the proper functioning of the company.

## Improvements in the time-off rights system for delegations

The current threshold of 500 employees is regulated according to company size.

Therefore:

- **In companies with represented staff not exceeding 149 employees**, the company director allots employee representatives total time-off rights proportional to the number of employees a delegate represents, based on 40 hours per week for 500 employees.
- **In companies with represented staff between 150 and 249 employees**, the company director allots employee representatives total time-off rights proportional to the number of employees a delegate represents, based on 40 hours per week for 250 employees.

Another new item: The above time-off rights are distributed proportionately to votes recorded amongst all of the voting lists that obtained at least 20% of seats at the election.

### Weekly time-off rights awarded to employee delegates

PRIOR TO REFORM			BEGINNING AS FROM 1 JANUARY 2016		
Staff in establishments	Number of delegates	Weekly time-off rights	Staff in companies	Number of delegates	Weekly time-off rights
15	1	1	15	1	1
20	1	2	20	1	2
40	2	3	40	2	3
60	3	5	60	3	5
80	4	6	80	4	6
100	4	8	100	4	8
120	5	10	120	5	10



## Overview of the main modifications by the new legislation

140	5	11
160	5	13
180	5	14
200	5	16
220	6	18
240	6	19
260	6	21
280	6	22
300	6	24
320	7	26
340	7	27
360	7	29
380	7	30
400	7	32
420	8	34
440	8	35
460	8	37
480	8	38
500	8	40

140	5	11
149	5	12
150	5	24
160	5	26
180	5	29
200	5	32
220	6	35
240	6	38
249	6	40

### Full-time delegates - modifications and improvements

From now on, a delegate will assume full-time status in companies with at least 250 employees, unlike the current threshold of 500 employees.

A company director must free generally from all normal duties and give a permanent exemption from service with full salary, as well as the right to promotion and advancement, as appropriate, to:

- 1 delegate, where a company has between 250 and 500 employees
- 2 delegates, where a company has between 501 and 1,000 employees
- 3 delegates, where a company has between 1,001 and 2,000 employees
- 4 delegates, where a company has between 2,001 and 3,500 employees
- 1 additional delegate by group of 1,500 employees, where employee numbers exceed 3,500.

**With regard to appointing full-time delegates**, the principle remains unchanged, except for the change in threshold with reference to the appointment of full-time delegates by trade unions with nationwide coverage represented in the outgoing delegation and who signed a collective bargaining agreement with the company. Here, where there are more than 1,000 employees instead of the previous level of 1,500 employees, the trade union organisations with national coverage represented in the delegation and bound to a company by a collective bargaining agreement each designate one of the full-time delegates.

**With regard to converting a delegate to full-time status**, a delegation may decide to convert one or several full-time delegates into time-off rights, on the basis of forty hours for each full-time delegate released, and - this is a new feature - proportional to votes obtained in the election. The company director must be informed of this.

### An agreement between employers and employee delegations must be set up to guarantee a career path for certain delegates

An agreement is to be drawn up between company directors and employee delegations that deals with the theoretical development of the careers of delegates whose time-off rights represent at least 50% of their normal work time with relation to a benchmark group of employees, and establishes measures for fully reintegrating these delegates into their former jobs or an equivalent job during or at the time of the end of their term as delegates.

This agreement will also regulate participation of all delegates in continuing professional education offered by the company, especially training related to the job held prior to the term and, if necessary, training for a new equivalent job to be held during or at the end of a delegate's term.

Thus, the new provisions go beyond current rules, which limit the content of the agreement to the issue of reintegrating delegates into jobs.

### **Reformulation of rights with regard to the right to meetings**

The law eliminates the overall rule that states that employee delegations may meet as often as required to efficiently carry out their statutory duties.

The only remaining part of the text is the right to meet once monthly during working hours, but only provided warning is given 5 working days before, and not 48 hours.

### **Improvements regarding meeting locations provided by employers**

Meetings of employee delegations are held in a location on company premises, which has been made available by employers.

The new law adds the stipulation that providing a place to meet must also include providing IT equipment and access to internal and external means of communication.

### **Communications and trade union rights - modifications**

The new law now also gives the right of disseminating trade union publications and posting trade union announcements to delegates elected on a list presented by a trade union organisation with sector representation.

Communications may now be displayed in various formats for this used, i.e. not necessarily only on sign panels.

However, the new law eliminates the collection of trade union dues within companies.

### **The right to communicate with employees in companies has been facilitated**

The employee delegation has the right, as does the Equality delegate, to set up panels for posting information, reports and stances on issues having a direct relationship with their legal duties.

The new law adds the stipulation that these same rights are also accorded to the Health and Safety delegate.

The concept of "panel" is replaced by one of "various formats accessible to staff".

Another new item: The law generally stipulates that the members of employee delegations have the right to contact all company employees.

As such, they are authorised to move freely within the company, on its work sites or other temporary work locations, and to come into contact with the employees after having informed the employer. They also have the right to contact them via all communications methods available in the company.

### **Delegation travel is facilitated**

Following this logic, employers will have to facilitate travel between company entities and, if required, place an appropriate means of transportation at their disposal.

### Rules and procedures and confidentiality obligation – new rules

#### Rules and procedures

Delegates are no longer subject to the rules and procedures of a company, but they must adhere to them in carrying out their function. The new law also stipulates that the rules and procedures may not impede employee delegates from carrying out their tasks.

#### Confidentiality obligation

Few major changes, other than that from now on experts are also subject to professional confidentiality obligations in the same manner as delegates and advisors to delegations.

The eight-day period in which to appeal to the Labour Inspectorate has been extended to 15 days.

### Addition of additional circumstances under which an employee delegate's term may end

At present, the term of a delegate ends under the following circumstances:

- the delegate is not re-elected as either a full or alternate member
- the delegate is no longer an employee of the company
- the delegate resigns
- the delegate dies
- delegates no longer belong to the trade union organisation that sponsored their candidacy, once delegates inform the company director and the delegation of this.

The new law adds a 6<sup>th</sup> circumstance for ending a term: in the event of a refusal, non-extension or withdrawal of the work permit, the term of the delegate will also be ended.

### New items relating to leave for training for delegates

A complement of 16 hours of training has been allotted to newly elected delegates during the first year of their term.

Alternate delegates are accorded half of the training hours attributed to full-time delegates. When these alternate members accede to full-time members during their term, the portion of training hours already taken in application of the provisions of the preceding paragraph is deducted from training they have the right to as full members.

Therefore, from now on, the trade unions who have representation in a major sector of the Luxembourg economy also participate in drawing up lists of training courses.

Furthermore, the Minister of Labour may authorise specific training courses on request.

The training rights of Health and Safety delegates will be expanded from the current eight hours of training, plus a specialist course to be set by a Grand Duchy regulation for the person's entire term, to 40 hours of training per term, with ten additional hours for initial terms in a given company.

## Protection for employee delegates against modifications to essential elements of their employment contracts

The law states that, throughout their entire terms, neither the work contracts of full or alternate members of employee delegations, or of the Health and Safety delegate may be subject to any alteration of a basic clause that would bring into play article L.121-7 of the Labour Code.<sup>3</sup>

If necessary, these delegates may by simple request, solicit the President of Labour Court to duly summon the parties involved and to rule on a summary and urgent basis with a view to halting any unilateral modification of such a clause.

## Major reorganisation regarding protection against dismissal

At present, the law provides rather simplistic protection against dismissal with notice, by means of a cancelling procedure for any dismissal process initiated, as well as the possibility for an employer to request the court to terminate a contract for serious misconduct by temporarily suspending an employee while awaiting the court's decision.

The new regulations will be somewhat more complex.

### The principle

Delegates may not be subject to a dismissal process or a summons to a meeting preliminary to dismissal, even for serious misconduct, during the legal protection period. Any such attempt at dismissal will have no legal effect.

There are two options for addressing a dismissal process:

#### *Cancellation procedure*

In the month following the dismissal, delegates may by simple request, solicit the President of Labour Court to duly summon the parties involved and to rule on a summary and urgent basis to nullify the dismissal and order that delegates be kept in their jobs or, if applicable, be reinstated in them.

#### *Alternative solution: An application for damages*

Delegates who do not apply for cancellation of the dismissal process may solicit the court to declare the contract void on the day dismissal was notified and to order the employer to pay damages that also acknowledges the specific damages suffered by a dismissal that has no legal effect with relation to the status of delegate under special protection. Delegates who choose this option are considered unemployed through no fault of their own beginning from the date of dismissal.

Legal action to compensate for possible abusive termination of a work contract must be presented to the Labour court within 3 months from the date dismissal was notified, failing which the claimant shall be precluded from filing.

**Note:** Accepting either a cancellation or damages option is irreversible.

<sup>3</sup> All modifications unfavourable to employees regarding an essential clause of their work contracts must be notified to employees in the manner and within the time period stipulated in articles L.124-2 and L.124-3, with effective date stated; if this does not occur, the modifications have no legal effect. Upon notification, employees may request that employers state the reasons for the modification and employers must do so in the manner and within the time period stipulated by article L.124-5.

Immediate modifications for serious causes must be notified to employees in the manner and within the time period stipulated by articles L.124-2 and L.124-10, otherwise they will have no legal effect.

Termination of work contracts stemming from employees' refusal to accept modifications notified to them are dismissals entitling persons to initiate legal action as stated in article L.124-11.

The provisions of this article do not apply in cases of internal reclassification in the meaning of Book V, Title V, concerning jobs for employees unable to perform the duties of their last job.

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## Overview of the main modifications by the new legislation

### Closing of a business

From now on, the law stipulates that when a business closes down, delegates' terms end automatically with the halt of business activities.

### Suspension for serious misconduct

If serious misconduct is evoked, company directors have the option of suspending a delegate. Such a decision must accurately state the acts that delegates are accused of and surrounding circumstances, to which the serious nature of the charges are attributable.

The act or acts that may justify a judicial rescission on grounds of serious misconduct may not be evoked after one month beginning from the day on which the party who lays charges discovers them, unless such acts only occurred during the month of criminal prosecution. The period of one month is not however applicable when a party evokes prior acts or misconduct to support a new act or new case of misconduct.

Delegates retain their salaries, including all other allowances and benefits to which they are entitled under their former contracts for a period of 3 months following the date of notification. Such salaries, allowances and other benefits are definitively retained by delegates.

- In the month following the suspension, delegates may by simple request, solicit the President of Labour Court to duly summon the parties involved and to rule on a summary and urgent basis to determine whether to maintain or suspend payment of salaries beyond the 3-month limit while awaiting the final resolution of the dispute.
- Delegates who do not wish to remain employed or to rejoin the company may solicit the court to terminate the contract within 3 months of notification of suspension and to seek a court regulation ordering the employer to pay damages acknowledging specific damages suffered by the termination of the contract with relation to the status of delegates under special protection.

Delegates who choose this option are considered unemployed through no fault of their own.

**Note:** The choice of either of these options is irreversible.

- Employers may request a judicial rescission on a work contract from the Labour Court, or by counterclaim as the case may be, no later than one month beginning from the date of the summons to appear before the Labour Court President.
  - Should the Labour Court deny the request, the impact of the suspension terminates automatically.
  - Should the Labour Court approve the request, termination takes effect on the date of the suspension notice.
- If an employer does not initiate this procedure within the specified period, an employee may by simple request, solicit the President of Labour Court to issue a ruling on a summary and urgent basis and within two weeks following the expiration of the deadline, to order the contract to remain in force for all parties in the case, or if an employee no longer wishes to remain or be reinstated at work, to solicit the Labour Court seek a court ruling ordering the employer to pay damages, acknowledging specific damages suffered by the termination of the contract with relation to the status of delegates under special protection. Delegates who choose this option are considered unemployed through no fault of their own.

### When delegates who are suspended find a new job

When delegates who have been suspended from their job take on a new job with compensation, either in a salaried or non-salaried position, employers may seek the discontinuation of wages before the Labour Court President.

### When delegates whose contracts have been terminated are ordered to reimburse salaries paid in the interim

Delegates whose contracts were terminated by the Labour Court for whom the President ordered maintaining salary payments up until final resolution of dispute and who are ordered to reimburse these interim salary payments to their employer may request of the Director of the National Employment Agency to

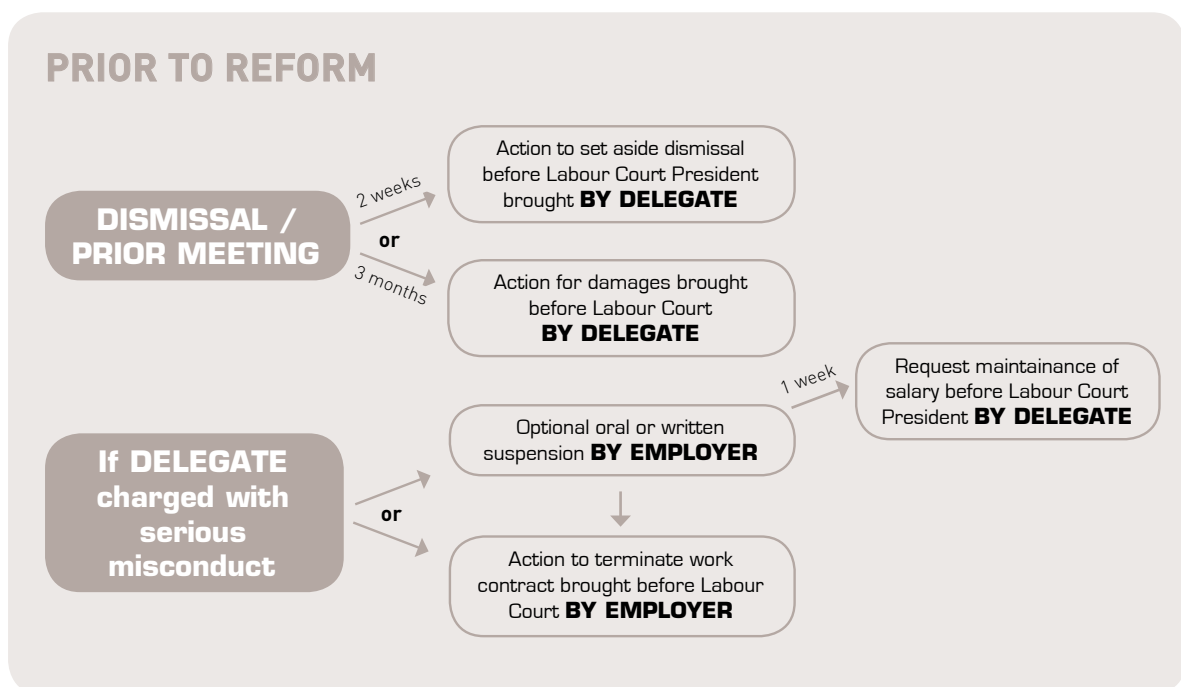
## Overview of the main modifications by the new legislation

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place them on the unemployment rolls for full benefits retroactively up until the date of final resolution of the dispute.

Delegates in this situation must prove that they have fully or partially repaid interim salaries prior to receiving retroactive unemployment benefits. In the absence of proof of full compliance with court orders and upon request by employers of delegates in this situation, the Director of the National Employment Agency will transfer the sum of unemployment benefits due to delegates directly to employers, up to the amount corresponding to the court order that remains due.

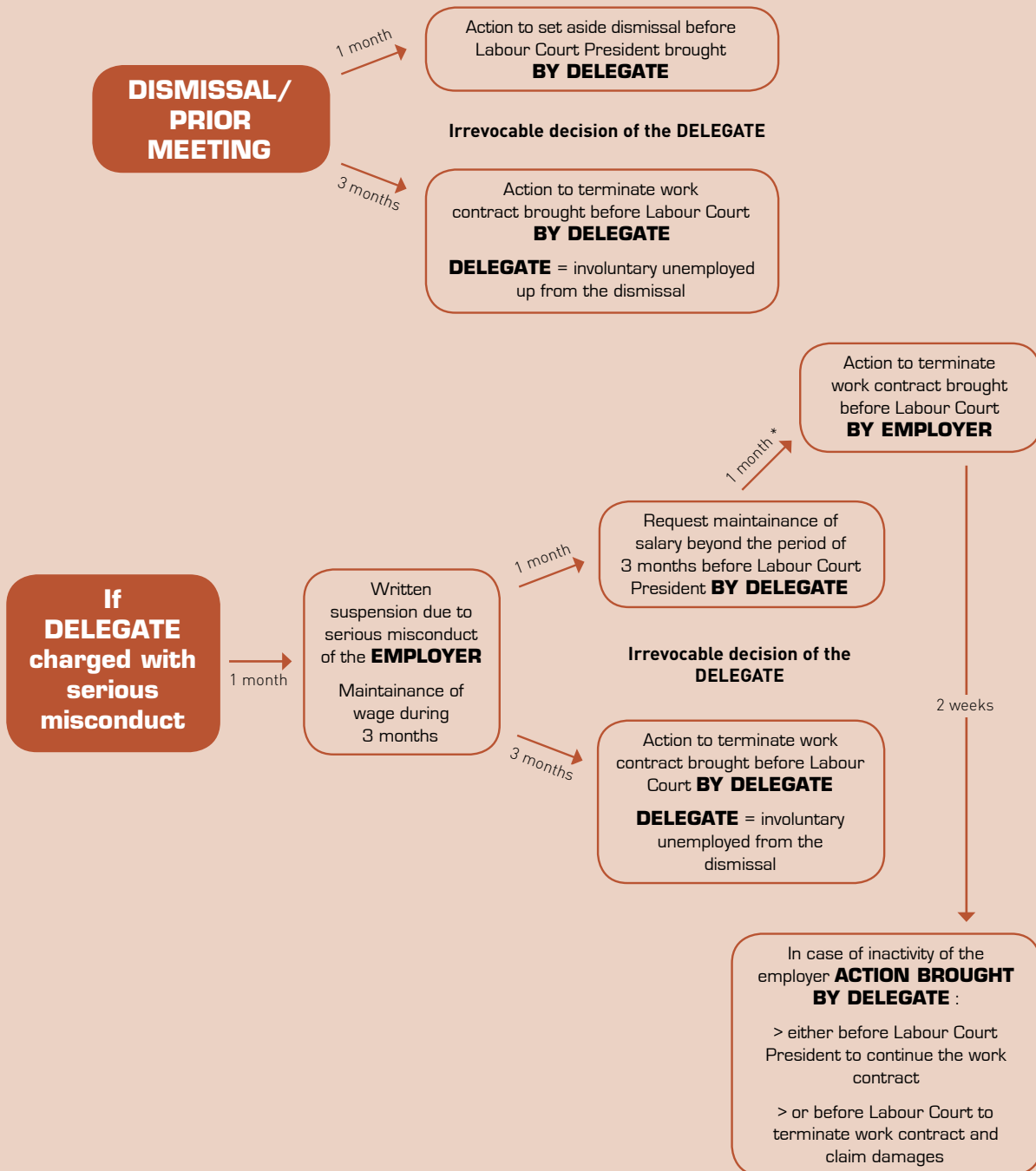
This eligibility for full unemployment benefits is a legal right, unless the delegate has been convicted of a crime by a final court judgment, for the same acts that justified that delegate's suspension. If this conviction occurred after the payment of all or part of the full delegate's full unemployment benefits, the delegate must repay the funds paid out by the Employment Fund for that purpose.





# Overview of the main modifications by the new legislation

## AS FROM 1 JANUARY 2016



\* Employers may request a judicial rescission on a work contract from the Labour Court, or by counterclaim as the case may be, no later than one month beginning from the date of the summons to appear before the Labour Court President.

### New assignments and responsibilities for employee delegations

The responsibilities of employee delegations have been restructured so as to be presented in the Labour Code in the most logical and transparent manner. However, the delegations have been awarded a certain number of new responsibilities to take effect as from 1 January 2016. Still, as from the 2018 social elections, delegations in companies with more than 150 employees will be assigned all the tasks that the joint works councils undertook up to that time; the councils will cease to exist from that point on.

Here is an overview of the new responsibilities of employee delegations:

2016

#### BEGINNING FROM 1 JANUARY 2016

- In the exercise of its functions, employee delegations will henceforth strictly ensure compliance with standards for equal treatment of men and women in the areas of access to jobs, training and professional advancement, compensation and working conditions.
- In the area of health and safety, employee delegations will also be informed regarding changes in absentee rates within companies.
- Where companies employ fewer than 150 persons for the twelve months previous to the first day of the month in which elections are announced, company management must inform employee delegations in writing of the economic and financial situation and recent and future activities of the company, at least once yearly. At present, this is reserved for companies organised under the form of joint stock companies. To this end, the company shall submit a report on all activities of the business, sales figures, overall production and operating income, orders, changes in the structure and amounts of personnel compensation and capital expenditures completed.
- Where employee delegation members believe that the information provided is insufficient for carrying out their tasks, they may request additional information from company directors provided that it is required by law to furnish the information requested.
- Where companies employ more than 100 persons and no longer, as before 1 January 2016, 150 persons, the delegation will participate in the training of apprentices in the company and in the management of apprenticeship centres, if such exist.
- They will work together with companies to set up and carry out all initial professional training schemes, particularly apprenticeships, as is done currently.
- They will participate in implementing harassment and violence prevention policies in the workplace.
- They will render opinions on working time related issues.
- They will formulate opinions on professional continuing education plans.
- They will participate in the management of measures promoting young people and advise employers on all issues relating to working conditions and protection of young employees.
- They will cooperate in the implementation of internal reclassification processes.
- They will promote obtaining a balance between family and professional life in employees.
- Company directors are obliged to inform and consult with employee delegations with regard to managing social programmes set up by companies to benefit employees and their families, including measures intended to provide housing or assist employees in finding it. To this end, delegations receive a management report from employers on at least a yearly basis. If employees make financial contributions to these social programmes, the management report must be formally approved by the employee delegation. Current legislation stipulates that delegations participate in managing social programmes.



### AS FROM THE 2018 SOCIAL ELECTIONS

Remember that beginning with the 2018 social elections, delegations in companies with over 150 employees will assume the tasks that are currently accomplished by joint works councils, which will no longer exist after that time.

**Note:** Joint works councils only exist in industrial, craft and trade companies of private sector. As from the 2018 social elections, all companies with over 150 employees are concerned alike, included non-profit organizations, foundations and employers of public sector.

### **Information and consultations in the technical, economic and financial areas in companies with at least 150 employees**

#### ***Company plant and equipment***

Company directors must inform and consult with employee delegations prior to making any major decision dealing with the following:

- Construction, transformation or extension of production or administration facilities
- Introducing, improving, renewing or converting company plant
- Introducing, improving, renewing or converting work methods and production procedures, except for any that would reveal manufacturing secrets.

Company directors are obliged to inform employee delegations with regard to the impacts of the measures cited above on working conditions and environments.

#### ***Changes in labour requirements***

In general, company directors shall inform and consult with employee delegations at least once yearly with regard to current and foreseeable labour requirements in the company, and especially with regard to professional training, improvement and re-education opportunities that may stem from these for the company's employees.

#### ***Economic and financial decisions that may have a decisive impact on companies' structure or jobs***

Employee delegations must be informed and consulted on every type of economic or financial decision that may have a decisive impact on companies' structure or jobs.

This is especially true for decisions that concern production and sales volumes, production programmes and gearing, investment policies, plans for halting or transferring companies or parts of companies, plans to restrict or extend the business of companies, plans for mergers or for changing company structures or the establishment, modification or cancellation of a complementary pension scheme.

Information and consultation here must necessarily pertain to the repercussions of measures under consideration on the volume and structure of personnel as well as on working conditions and the work of staff in companies. They will also pertain to social measures, especially professional training and re-education that are being taken or considered by company directors.

The information and consultation phase will in principle occur prior to making any decision. This will not however occur where such actions could impede the management of a company or of a part of a company, or where it could compromise the achievement of a planned operation. In this case, company directors must provide all required information and explanations to employee delegates within 3 days.

#### ***Economic and financial change within companies***

Company directors must inform and consult with employee delegations in writing at least twice yearly with regard to economic and financial changes occurring within companies.

To this end, company directors will submit a report on their companies' entire business to employee delegations that includes sales figures, overall production and operations results, orders, changes in the structure and amounts of employee compensation and capital expenditures programmes completed.

Where companies are organized as follows,

- Joint stock corporations
- Non-profit associations<sup>4</sup>
- Cooperative<sup>5</sup>
- Foundation<sup>6</sup>

Management is furthermore obliged to communicate profit and loss statements, the annual report, statutory auditors' report, the Board of directors' or Management report and any other document to be submitted to shareholders' meetings or decision making entities to employee delegations prior to presenting this information at general shareholding meetings or to decision making entities.

### ***Diverging positions***

When divergent positions arise between company directors and employee delegations, such divergences must be brought to the attention of the board of directors, or if appropriate, to the manager(s).

Where companies are not organised as joint stock corporations, the positions described above must be brought to the attention of the company director if this person did not personally participate in discussions.

In all events, company directors, boards of directors, decision making entities or managers must report on the how the stances expressed are to be dealt with and provide justification for subsequent action.

### **Right to participate in certain company decisions in companies with at least 150 employees**

Decisions pertaining to the following issues must be taken jointly between employers and employee delegations:

1. The introduction or application of technical installations whose purpose is to check the behaviour or performance of employees at their workstations.
2. The introduction or modification of health and safety measures of employees as well as the prevention of occupational illness.
3. The establishment or modification of overall criteria pertaining to personal selection for hiring, promoting, transferring, dismissing and, if appropriate, priority criteria for admitting employees to pre-retirement programmes.
4. The establishment and implementation of any professional continuing education programme or collective action<sup>7</sup>.
5. The establishment or modification of overall evaluation criteria for employees.
6. The establishment or modification of rules of procedure taking into account any collective bargaining agreements in effect.
7. The granting of awards to employees who, through their initiative or recommendations for technical improvements have proven particularly useful to companies, without prejudice to laws and regulations on patents or inventions.
8. The implementation of a data processing system for personal information with the purpose of monitoring them in the workplace, where this is justified by one of the following reasons.
  - The requirements of the health and safety of employees
  - Temporary verification of the production or services of an employee, where such a measure is the only method for determining exact compensation, or
  - Work organisation on a flexible time schedule

4 This is a new aspect introduced by the 2015 law compared to the current text on joint works councils

5 This is a new aspect introduced by the 2015 law compared to the current text on joint works councils

6 This is a new aspect introduced by the 2015 law compared to the current text on joint works councils

7 This is a new aspect introduced by the 2015 law compared to the current text on joint works councils

2018

## Other specific consultation assignments in all companies

In all companies, including those with fewer than 150 employees, employee delegations will undertake the tasks listed below, at present assumed by joint works councils, where they exist, and if not, by employee delegations.

### *Temporary work, temporary use of labour and part-time work*

Employee delegations must be informed and consulted previously.

### *Data processing systems for personal information with the purpose of monitoring in the workplace*

Delegations will be informed previously when employees seek to implement data processing systems of personal data for monitoring purposes in the workplace.

### *Occupational health services*

Delegations may request occupational physicians to carry out medical examinations. They will have the right to access and comment on annual reports of occupational physicians prior to transferring them to the Health directorate, and will also be entitled to receive lists of jobs that are dangerous for pregnant women.

### *Early retirement under the solidarity or progressive schemes*

At present, priority criteria for admission into early retirement programmes are established by collective bargaining agreements or agreements made by companies, the minister or by joint works councils. If no joint works council exists, employers establish the priority criteria following consultation with competent employee delegations.

From now on, the priority criteria will be established by collective bargaining agreements or by agreements made between companies and the minister. In companies employing at least 150 persons, this is done according to the rules for participation of employee delegations.

In companies employing fewer than 150 persons, employers establish priority criteria following consultation with employee delegations.

## Proposals for company auditors in public limited companies with employee representatives in the management bodies of the company

Prior to reform, auditors are appointed by general shareholding meetings on the recommendations of joint works councils.

From now on, they will be appointed by the general meeting of shareholders on recommendation of employers at the outcome of the employee delegation participation procedure.

## Establishment of a mediation commission

From now on, concerning disputes in the following areas are treated as described below:

- Economic and social entity<sup>8</sup>
- Rights to assistance from advisors and experts
- Withholding of information by employers
- Right of employee delegations to participate<sup>9</sup>
- Organisation and functioning of the delegation.

<sup>8</sup> As from the 2018 social elections

<sup>9</sup> As from the 2018 social elections

Disputes that are not certifiably resolved in the month following possible involvement by the Labour and Mines Inspectorate may, during the month following the issue of a certificate of non-resolution, be submitted to a mediation commission set up under a collective bargaining agreement, either at company level or sector level, or as part of an inter-professional dialogue agreement.

This commission is chaired by a mediator designated jointly by the parties in a collective bargaining or inter-professional dialogue agreement.

The mediator may bring in an employer representative and a delegation representative to facilitate the task.

The collective bargaining or inter-professional dialogue agreement also set which procedure to follow, what deadlines to adhere to, who pays costs and the other implementing provisions of this paragraph.

Where companies do not provide for a mediation commission, the parties may solicit the Director of Labour and Mines Inspectorate during the month following the issue of a certificate of non-resolution, who summons them within five days in order to designate a mediator.

In this case, mediators are chosen jointly from a list covering five-year periods that include six persons recommended by the Ministry of Labour and chosen by the Government.

If the parties cannot agree on the mediator, one is chosen by random form the six-person list.

Mediators may request one or several experts to assist. The mediator is assisted by a government representative who is provided by the Labour and Mines Inspectorate as administrative secretary.

If mediation does not produce an agreement within 3 months of the appointment of a mediator, the mediator prepares a report outlining the areas of disagreement and then submits it to the parties and the Labour and Mines director.

We note that the Labour Court should remain the competent body for knowing disputes that may be submitted to the mediation commission, except with regard to participation rights of employee delegations, which falls under the sole competence of the mediation commission.



**PART**



**GUIDE TO FUTURE APPLICABLE  
PROVISIONS**



The law dated 23 July 2015 for the reform of social dialogue within companies<sup>10</sup> is imposing a number of major new rules that will govern the social dialogue processes in companies.

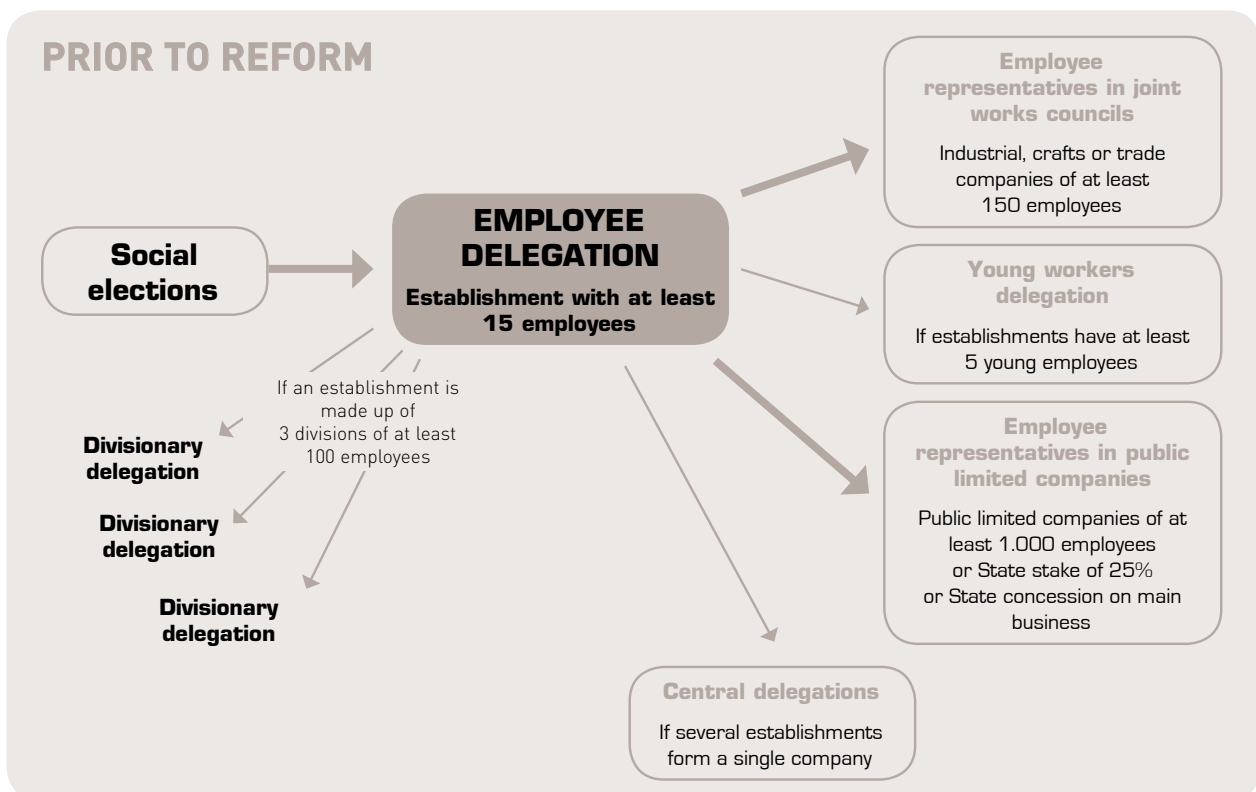
Part of the legal modifications will go into effect beginning on 1 January 2016. Others will not take effect until the next social elections in 2018.

Warning: The purpose of this text is to provide an overview of the rules regulating social dialogue as from 2016. Rules that will not take effect before 2018 are stated separately in blue boxes.

It consists of 3 parts:

- Part I is consecrated to employee delegations.
- The second part focuses on joint works councils. This part remains valid up until the 2018 social elections.
- The last part is dedicated to employee representatives in public limited companies.

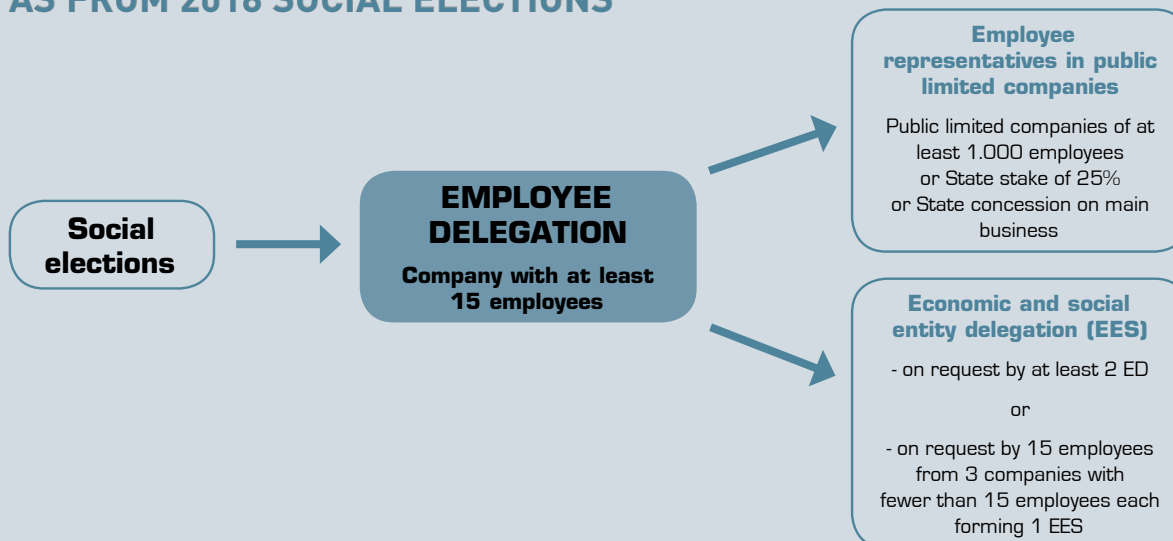
# 1 EMPLOYEE DELEGATIONS



10 Mémorial A n° 144 dated 27 July 2015



### AS FROM 2018 SOCIAL ELECTIONS



## 1.1. Establishing employee delegations

### 1.1.1. Employee delegations<sup>11</sup>

Employee delegations will now be established at the company level, and no longer at the level of one of a company's establishments

Rules applicable to their establishment are the following:

#### **Private sector employers**

All companies, regardless of type of business, legal form or sector of activity, are obliged to designate employee delegates if they have had at least 15 employees working under employment contracts for the 12 months prior to the first day of the month in which elections are announced.

#### **Public sector employers**

The same is true for all public sector employers who employed at least 15 employees working under employment contracts for the 12 months prior to the first day of the month in which elections are announced with employment contracts other than those whose work relationships are regulated by a particular status not under private law, especially a public law or similar status, including government and public employees.

#### **Transfer of a company**

We note that employees who have joined a company via the transfer of a company, establishment or part of a company or establishment in the meaning of Book I, Title II, Chapter VII of the Labour Code, are deemed to be part of this company from the date of the beginning of their employment with the initial company.

#### **Employees taken into account in determining the workforce of a company**

##### **Full-time employees**

All employees in a company working under an employment contract except apprentices are counted in determining how much staff is employed by a company.

<sup>11</sup> Art. L.411-1 of the Labour Code

**Part time employees**

Employees working part time who work up to or more than 16 hours per week are fully counted as staff employed in the company.

Employees working fewer than 16 hours per week are counted by dividing total payroll hours entered in their work contracts by statutory work time or working time agreed to by contract.

**Employees with fixed-term contracts and temporary workers**

Employees working under fixed-term contracts and those working temporarily in a company are accounted for on a pro rata basis of the time they are present in a given company over the twelve months preceding the mandatory date for submitting electoral lists.

However, employees with fixed-term contracts and seconded personnel are excluded from staff counts when they are replacing an employee who is absent or whose contract has been suspended.

**Temporary work agencies<sup>12</sup>**

In arriving at the number of staff employed by temporary work agencies, permanent employees of such companies are counted first, then staff that worked in it via short term contracts for a period of at least ten months during the year preceding the calculation are added in.

**1.1.2. Divisionary delegations, which will no longer exist after the next social elections in 2018<sup>13</sup>**

**Note:**

Since up until the elections in 2018 the current articles L.411-3 to L.411-5 of the Labour Code remain in effect, we will continue to refer to company entities rather than to companies themselves when referring to divisionary delegations. This applies also to central delegations.

The rules are still as follows:

If an entity is comprised of at least 3 divisions, upon request of primary delegations for each division, a divisionary delegation is established within 3 months of appointing the primary division, provided that the division has a minimum one hundred regular employees.

Company directors determine and mark out the limits of divisions making up the entity in agreement with primary delegations.

In the event of disagreement, company directors or primary delegations may solicit a ruling from the Ministry of Labour, who rules on the merits of the case, in conjunction with the opinion of the Director of the Labour and Mines Inspectorate. This decision may be appealed before the Administrative Court, which will issue a final ruling as the competent jurisdiction.

Each divisionary delegation is elected in the same way as the primary delegation and is made of one full member and one alternate for every fifty employees, up to a limit of five.

**1.1.3. Central delegations, which will no longer exist after the social elections in 2018<sup>14</sup>**

Since up until the elections in 2018 the current articles L.411-3 to L.411-5 of the Labour Code remain in effect, we will continue to refer to company entities rather than to companies themselves with regard to central delegations.

The following rules are applicable:

When several entities make up a single company, a central delegation is formed.

The central delegation represents the interests of all employees working in the various entities of a single, like company.

<sup>12</sup> Art. L.411-2 of the Labour Code

<sup>13</sup> Former Art. L.411-3 of the Labour Code

<sup>14</sup> Former Art. L.411-4 of the Labour Code.

Central delegations are composed of 3 full members and 3 alternates for each of the separate establishments.

The members of the central delegation are elected by primary entity delegations via a secret list ballot and by proportional representation, from amongst the members composing them.

### 1.1.4. Young employee delegations, which will no longer exist after the social elections in 2018<sup>15</sup>

Since up until the elections in 2018 the current articles L.411-3 to L.411-5 of the Labour Code remain in effect, we will continue to refer to company establishments rather than to companies themselves with regard to young employee delegations.

Representation of young employees in companies is achieved as follows:

- 1 delegate, where an entity employs at least 5 young workers regularly
- 2 delegates, where an entity employs at least 25 young workers regularly
- 3 delegates, where an entity employs at least 50 young workers regularly
- 4 delegates, where an entity employs at least 100 young workers regularly

There is an alternate delegate for each young employee delegate.

Adolescents of both genders who have not yet reached the age of 21 and have worked in the company for at least six months are eligible to vote or to stand election as young employee delegates.

Young employees' delegates advise entity directors and the primary delegation regarding all issues pertaining to working conditions and the protection of young workers, as well as apprenticeship issues.

They are entitled to enter these subjects on the agendas of primary delegation meetings.

Young employees' delegates are authorized to attend primary delegation meetings when these meetings discuss issues dealing with teenaged employees.

A spokesperson for young employees attends all primary employee delegations meetings.

### 1.1.5. Delegations in Economic and Social entities (EES)

According to article L.161-2 of the Labour Code, *"The expression 'company making up an economic and social entity' means a group of entities, even with autonomous and/or distinct legal personalities or operating as a franchise, that feature one or several elements from which it may be concluded that they are not independent and/or autonomous units, but are manifestly a concentration of management powers and identical and complementary businesses, or a community of employees linked by identical, similar or complementary interests, with a comparable social status. All available elements are taken into consideration in evaluating whether an economic and social entity exists, to include having shared or complementary structures or infrastructures, having a shared, complementary or coordinated strategy, having one or several economic beneficiaries that are totally or partially identical, complementary or inter-related, having shared, complementary or inter-related management or shareholding structures, or management, direction or control entities made up wholly or partially of the same persons or persons representing the same organizations, or having a community of employees linked by shared or complementary interests or that feature a similar or related social status. Several establishments functioning under an identical or very similar emblem, including under a franchise scheme, are supposed to make up an economic and social entity in the meaning of this article."*

#### **Manner of appointment**

Where several companies make up an economic and social entity, a delegation may be established at the economic and social entity level, upon request by at least two delegations of the entity.

Applications for this must be prepared within 3 months following elections of employee delegations and submitted to the employers of the entities concerned.

<sup>15</sup> Former Art. L.411-5 of the Labour Code

**Companies with fewer than 15 employees**

If at least 3 companies, each employing fewer than 15 persons, constitute an economic and social entity, and together they employ at least 15 persons, a request to establish a delegation at the economic and social entity level may be submitted to the Labour and Mines Inspectorate by at least 15 employees.

The Labour and Mines Inspectorate sets the date for elections for these delegations, whose outcomes are determined by the relative majority system.

If the grounds for requesting a delegation are contested, a case may be submitted to mediation.

***Responsibilities***

Delegations representing economic and social entities defend the interests of all employees working in the various companies making up the economic and social entity.

These delegations have the sole task of exchanging information between the various employee delegations from which they stem.

They are made up of full and alternate delegates of each of the separate companies with delegations.

***Makeup***

The number of delegates by company depends on its staff numbers:

- Companies with 15 to 100 employees have 1 full delegate and 1 alternate delegate
- Companies with 101 to 500 employees have 2 full delegates and 2 alternate delegates
- Companies with over 500 employees have 3 full delegates and 3 alternate delegates.

Delegation members at the economic and social level are elected by employee delegations in accordance with relative majority rules and on a secret list ballot from amongst the members of the delegation.

If one or several companies with fewer than 15 employees have no employee delegation amongst the companies comprising an economic and social entity, a representative is designated from all of the employees of these companies who participates in delegation meetings at the economic and social entity level.

This representative will be allotted one half of the leave for training hours allotted to full delegates.

***Rights and responsibilities***

Delegations so elected are subject to the same legal stipulations as employee delegations, except for those concerning information and consultations in the technical, economic and financial areas, participation in certain company decisions, Health and Safety delegates and Equality delegates.

Their members therefore have the same rights and responsibilities as employee delegations, except for the right to training, which in all cases is the maximum training allotment for alternate delegates.

**1.2. Makeup of employee delegations<sup>16</sup>**

The numerical composition of employee delegations depends on the number of staff represented:

- 1 full member for staff numbering 15 to 25 employees
- 2 full members for staff numbering 26 to 50 employees
- 3 full members for staff numbering from 51 to 75 employees
- 4 full members for staff numbering from 76 to 100 employees
- 5 full members for staff numbering from 101 to 200 employees
- 6 full members for staff numbering from 201 to 300 employees
- 7 full members for staff numbering from 301 to 400 employees

<sup>16</sup> Art. L.412-1 of the Labour Code

- 8 full members for staff numbering from 401 to 500 employees
- 9 full members for staff numbering from 501 to 600 employees
- 10 full members for staff numbering from 601 to 700 employees
- 11 full members for staff numbering from 701 to 800 employees
- 12 full members for staff numbering from 801 to 900 employees
- 13 full members for staff numbering from 901 to 1,000 employees
- 14 full members for staff numbering from 1,001 to 1,100 employees
- 15 full members for staff numbering from 1,101 to 1,500 employees
- 16 full members for staff numbering from 1,501 to 1,900 employees
- 17 full members for staff numbering from 1,901 to 2,300 employees
- 18 full members for staff numbering from 2,301 to 2,700 employees
- 19 full members for staff numbering from 2,701 to 3,100 employees
- 20 full members for staff numbering from 3,101 to 3,500 employees
- 21 full members for staff numbering from 3,501 to 3,900 employees
- 22 full members for staff numbering from 3,901 to 4,300 employees
- 23 full members for staff numbering from 4,301 to 4,700 employees
- 24 full members for staff numbering from 4,701 to 5,100 employees
- 25 full members for staff numbering from 5,101 to 5,500 employees
- 1 additional full member for every 500 additional employees where employee numbers exceed 5,500.

Employee delegations also include an equal number of alternate members for each full member.

Where the delegation is comprised of a single full member, the alternate delegate is fully authorized to attend meetings.

### 1.3. Right to assistance by advisors and experts<sup>17</sup>

#### ***Number of advisors***

In companies in which at least 51 employees were working for the 12 months prior to the first day of the month in which elections are announced, advisors may participate in employee delegation meetings focusing on distinct issues in an advisory capacity, whether or not they are working in the company, provided that the number of advisors does not exceed 1/3 of the delegation members.

#### ***Determination of advisors***

- **In companies where between 51 and 150 employees** have been working for the 12 months prior to the first day of the month in which elections are announced, the trade unions who have general nationwide or sector representation and who are represented by at least one third of full elected members have the right to recommend advisors.
- **In companies where over 150 employees** have been working for the 12 months prior to the first day of the month in which elections are announced, the trade unions indicated above who have general nationwide or sector representation who have obtained at least 20% of elected members at the most recent elections, each have the right to recommend one of its advisors. In this case, the limit of one third of the number of delegation members with regard to the number of advisors may be exceeded.

<sup>17</sup> Art. L.412-2 of the Labour Code

The delegation designates the advisors who are entitled to attend delegation meetings, if required based on the proposals submitted to it in conformity with the preceding paragraphs.

If the total number to be appointed exceeds that of advisors thus appointed, the employee delegation may approve additional advisors up to the limits stipulated by the first paragraph.

To this end, the unions who have general nationwide or sector representation and who are represented by at least one third of full elected members are entitled to submit proposals.

### **External experts**

Delegations may decide to designate an outside advisor if they believe that the issue is decisive for the company or its employees.

Unless otherwise provided, the cost to the company for an expert is limited to one expert and may not exceed a certain percentage of the total annual payroll per expert and per year, as stated by employers to the Joint Social Security Centre during the year preceding the decision for this mandate, to be determined by Grand Duchy regulation

Company directors must be informed previously with regard to the type of mandate given.

### **Use of employer and trade union organisations**

In all companies with employee delegations, a delegation may decide upon request by delegates or company directors to put selected issues under a joint review by a professional employer's organisation and a trade union with general nationwide or sector representation.

## 1.4. Designation of employee delegates

### 1.4.1. Manners of designating delegates<sup>18</sup>

Full and alternate employee delegates are elected by employees in companies from a list of candidates originating:

- With a trade union having general nationwide representation
- With a trade union having sector representation in the sector where its representation is acknowledged.
- With another trade union organisation representing the absolute majority of members who make up the outgoing delegation.
- With a number of company employees who represents a minimum of five per cent of total staff, provided this number does not exceed 100.

#### **Companies with 100 or more employees**

Votes are submitted by secret ballot in accordance with proportional representation rules.

#### **Companies with fewer than 100 employees**

Voting is carried out using the relative majority system.

#### **Rules for candidate lists**

No list may contain more candidates than there exist full and alternate positions to be filled.

No candidate appearing on the list will be considered elected if the entire list does not garner a minimum of five percent of votes cast.

The rules of voting and resolving electoral disputes will be stated in a Grand Duchy regulation.

<sup>18</sup> Art. L.413-1 of the Labour Code

### ***Postal voting***

Upon request by company directors or by delegations, the Minister of Labour may authorise postal voting for employees in the manner and under the conditions the Minister determines, who are absent from the premises on voting day because of work duties or illness, work accidents, or maternity or annual leave.

### ***Identical number of candidates for positions to be filled***

If the number of candidates presented does not exceed the number of full and alternate delegates to be elected, and if the candidates agree to designate the full and alternate delegates and the order in which alternates will be called to replace full delegate(s), these shall be declared automatically elected.

### ***Lack of candidates***

Should no candidates be presented the company CEO or that person's nominee shall prepare a report to be submitted no later than the date of elections to the director of the Labour and Mines Inspectorate, who shall conduct a survey within the company.

On recommendation of the Labour and Mines Inspectorate, the full delegates and any alternates are designated by a Ministry of Labour directive from amongst the eligible employees of a company, within two months following the elections.

### ***Length of term of delegates<sup>19</sup>***

The members of delegations are appointed for a term of five years and may be re-elected.

### ***Replacement of the delegation<sup>20</sup>***

#### **Standard circumstances**

Delegations are completely renewed between 15 October and 15 November of each fifth calendar year on a date set for all replacements by the Ministry of Labour, which are published in the Mémorial.

#### **Unusual circumstances**

- The Ministry of Labour may, upon consultation of all trade unions who have general nationwide or sector representation and who are represented within elected employee delegations, fully replace an employee delegation outside of the period stated above when there are insufficient numbers of full members and there are no replacement members available to sit on vacant seats.
- In the same way, elections must be set up outside of the afore-stated period as described above, when staff employed in a company reaches the minimum requirement for setting up an employee delegation.

Terms for established or renewed delegations expire with those of delegations established under standard circumstances, unless the length of the term resulting from this is less than one year. In this case, delegates' terms are extended for a renewed period of five years.

The delegation established under these circumstances continues to carry out its functions through to the expiration of its term, with the same makeup it had coming out of the elections, notwithstanding changes in staff.

#### **Special circumstances involving transfer of companies**

When companies, entities or parts of companies are transferred in the meaning of Book I, Title II, Chapter VII, the status and function of employee delegations subsist to the extent that the entity retains its autonomy.

If companies, entities or parts of companies do not retain their autonomy, employee delegation members will automatically join the employee delegation of the entity hosting transferred employees.

<sup>19</sup> Art. L.413-2 of the Labour Code

<sup>20</sup> Art. L.413-2 of the Labour Code

The enlarged delegation will designate a president, vice-president, secretary and board within the month following the transfer. The exceptional nature of the employee delegation makeup will terminate at its first renewal.

If employees of companies, entities, parts of companies or parts of entities that do not retain their autonomy are merged into an entity that has no employee delegation, the employee delegation of the transferred entity assumes the role of joint delegation.

## ***Electorate conditions***

### ***Voting***<sup>21</sup>

Employees may participate in employee elections regardless of nationality provided they have reached the age of 16 years, have a work or apprenticeship contract with a company and on the day of the elections have worked in the company for at least six months.

### ***Eligibility for seats***<sup>22</sup>

To be eligible to stand elections as an employee delegate, staff members must meet the following criteria:

- Be at least 18 years of age on the day of the election
- Have worked continuously for the 12 months previous to the first day of the month in which elections are announced
- Be either of Luxembourg nationality or be authorized to work in Luxembourg.

**Note:** Relatives and connections up to the fourth degree of the company director, management, other directors and personnel supervisors of the entity may not be elected as full or alternate members of an employee delegation.

Employees working on a part time basis<sup>23</sup> simultaneously in several companies are eligible for election only in the company in which they are employed the most on a weekly basis. If equal time is spent in two companies, these persons are eligible in that in which they have worked the longest.

If one company in which an employee would be eligible for election is not legally required to establish an employee delegation, the employee is eligible in the company that is required to have a delegation.

Temporary and seconded workers<sup>24</sup> may not assert their voting or eligibility rights for the positions of employee delegate, employee representative to joint works councils or to the board of directors in companies using them.

**Note:** Nonetheless, temporary or seconded workers may use their rights to submit claims, consult employee delegates and to access personnel files concerning them within the company.

## **1.5. Remit of employee delegations**

### **1.5.1. Definitions**<sup>25</sup>

The term

- **information** means, the transmission of information by employers to employee delegations to provide them with knowledge of an issue under review and to assess it at a time, in a manner and with content that is appropriate so that the delegation may process it and prepare for any necessary consultations.
- **consultation** means an exchange of perspectives and establishing of dialogue between employee delegates and employers, carried out at a time, in a manner and with content that is appropriate,

<sup>21</sup> Art. L.413-3 of the Labour Code

<sup>22</sup> Art. L.413-4 of the Labour Code.

<sup>23</sup> Art. L.413-5 of the Labour Code.

<sup>24</sup> Art. L.413-6 of the Labour Code.

<sup>25</sup> New Art. L.414-1 of the Labour Code (former article L.414-5 of the Labour Code).



on the basis of information provided by employers in accordance with the provisions of the above note and producing the opinion that employee delegations formulate by right, so as to allow employee delegations to meet with employers and obtain from them a reasoned response to all opinions they may have submitted, in order to arrive at, if necessary, agreement regarding decisions on items within employers' power.

The social partners may, at any time and at an appropriate level, which may be at company level, freely determine the methods for informing and consulting with employees through negotiations. These agreements may provide for different application provisions, provided that, when determining how to implement the information and consultation methods, employers and employee representatives work in an environment of mutual cooperation and respect of mutual rights and responsibilities, acknowledging at once both the interests of the company and that of employees.

### 1.5.2. General remit and right to information<sup>26</sup>

#### ***General task of consolidating and protecting the interest of employees***

The employee delegation is responsible for the overall consolidation and protection of the interests of employees of the company in the realm of working conditions, job security and social standing.

#### ***Resolution of disputes***

As part of its overall responsibilities, employee delegations are called on to:

- **Anticipate and resolve disagreements of an individual or collective nature in a spirit of cooperation**, which may arise between employers and staff
- Submit **all individual or collective complaints** to employers
- **In the absence of an agreement to the above-mentioned disagreements, bring proceedings before the Labour and Mines Inspectorate** detailing all complaints or observations related to the application of legal, regulatory, administrative and contractual provisions of working conditions, rights and protection of employees in the exercise of their work.

#### ***Equal treatment***

In carrying out its functions, employee delegations ensure strict compliance of equal treatment between men and women in terms of access to jobs, professional training and promotions, compensation and working conditions.

#### ***Information pertaining to company operations and corporate life***

Company directors are responsible for communicating information to employee delegations that is necessary to properly carry out their duties and that will inform delegation members about company operations and corporate life, including recent and probable developments in its business, as well as its economic situation.

- Communication of such information will be provided upon request by the delegation or on a monthly basis in companies with at least 150 employees
- In other companies, at meetings with company management.

#### ***Health and safety***

Company directors are responsible for providing employee delegations and the Health and Safety delegate with all the information necessary for informing members with regard to:

1. **Health and safety risks and measures and activities undertaken for protection and prevention** that concern both the company in general and each type of workstation and function
2. The **protection measures** to be implemented and, if necessary, any **protective equipment** to be used
3. **Changes in the absentee rate**

<sup>26</sup> New Art. L.414-2 of the Labour Code (former article L.414-1 of the Labour Code)

The information contained in 1 and 2 above must also be communicated to all employers of persons working for outside companies that work within the company, who then submit it to that company's employee delegation.

Further more, employers must **consult** employee delegations about issues impacting the health and safety of employees.

#### **Information regarding economic and financial change**

Where companies employ **fewer than 150 persons** for the 12 months prior to the first day of the month in which elections are announced, management must inform the employee delegation in writing at least once per year regarding the economic and financial changes affecting the company, as well as recent and future activities of the business.

To this end, company directors will submit a report on their companies' entire business to employee delegations that includes sales figures, overall production and operations results, orders, changes in the structure and amounts of employee compensation and capital expenditures programmes completed.

Where employee delegation members believe that the information provided is insufficient for carrying out their tasks, they may request additional information from company directors provided that it is required by law to furnish the information requested.

### **1.5.3. Information and consultations on company life <sup>27</sup>**

#### **Miscellaneous information and consultations**

Employee delegations are charged with the following in the area of information and consultations:

1. To formulate opinions and proposals on all issues dealing with **improvement of working and employment conditions and of the social situation of employees** in companies
2. To give its opinion on the drafting or modifications of **rules and procedures** of the company and to strictly monitor compliance with these rules and procedures
3. To recommend **modifications to rules and procedures**, on which management or the participants of meetings must produce a decision within two months, which is to be communicated immediately to the delegation
4. In companies with staff of at least 100, delegations will participate in the **training of apprentices in the company and in the management of apprenticeship centres**, if such exist
5. To assist in establishing and carrying out all initial professional training programmes, especially **apprenticeships**
6. To promote the **entry of disabled and handicapped persons** into companies and to endeavour to create jobs appropriate to their physical and intellectual capabilities
7. To participate in **industrial safety and environmental protection** and in the prevention of industrial accidents and occupational illnesses
8. Participate in the **implementation of policies for the prevention of harassment and violence in the workplace**
9. To give its opinion prior to the establishment, modification or cancellation of a **supplementary pension scheme**
10. To give its opinion on issues regarding **working time**
11. To give its opinion regarding **professional continuing education plans**
12. To participate in the management of **measures promoting young people** and to advise employers on all questions related to working conditions and the protection of young employees
13. To assist in implementing **internal reclassification programmes**
14. To promote **reconciliation of family and professional life**.

<sup>27</sup> New Art. L.414-3 of the Labour Code (former article L.414-4 of the Labour Code)

### ***Structure and changes in employment***

Company directors must inform and consult with employee delegation and the Equality delegate with regard to the situation, **the structure and probable changes in employment** within the company as well as any forward looking measures, especially in the event of a threat to employment. Directors must provide a **six-monthly** breakdown of **statistics by gender on hiring, promotions, transfers, dismissals, compensation and training of company employees to employee delegations and to equality delegates.**

### ***Major modifications in work organisation or in work contracts***

Company directors must inform and consult with employee delegations with regard to decisions that could result in **major modifications in work organisation and employment contracts**, to include those addressed by the provisions concerning legislation on collective redundancies, maintaining employee rights when transferring between companies and on using temporary workers.

### ***Professional integration and Initial Employment contracts***

Company directors must inform and consult with employee delegations and equality delegates with regard to **establishing professional integration and initial employment contracts.**

### ***Management of social works***

Company directors must inform and consult with employee delegations regarding **the management of social works** prior to participating in them, which have been set up by the company for the benefit of employees and their families, including measures intended to facilitate housing issues for employees.

To this end, delegations receive a management report at least once yearly from company directors.

If employees contribute financially to social works, this management report must be formally approved by employee delegations.

## **1.5.4. Other tasks**

Employee delegations also have authority in the following areas:

- In companies where no joint works council exists, the delegation receives prior notice when employers intend to implement data processing of personal data for monitoring purposes in the workplace
- In companies with over 150 employees, it receives a copy of the invitation to the prior interview for an employee where a company is considering dismissing or essentially modifying the employee's work contract
- In a transfer of a company, the employee delegation is consulted regarding any measures under consideration concerning employees by the transferee or transferor
- In the area of working time: Delegations receives overall statements of account by organisational units where employers are operating under a flexible hours programme; where companies operate with a work organisation plan, each plan must be submitted to employee delegations for their opinion; they must be informed of all compensatory work time before it is performed; if, upon request by employees, rules for daily breaks are implemented, delegations must be consulted previously; delegations are also consulted when work on Sunday is needed and must indicate their agreement for all overtime hours, failing which employers must apply for approval by the Labour and Mines Inspectorate
- All shutdown of work for collective leave requires the agreement of employee delegations
- Delegations participate in preventing and managing problems of psychological harassment in companies
- In the area of sexual harassment: Where no Equality delegate exists, delegations ensure the protection of staff against sexual harassment in work relations and recommend preventive actions. Delegations may also assist and advise employees who are victims of sexual harassment

- Delegations may cooperate with occupational health services: In companies where there is no joint works council, delegations have the right to receive and comment on the yearly report of the occupational physician prior to its submission to the Health directorate. They are also entitled to request medical examinations and to receive lists of jobs deemed dangerous for pregnant women
- Right of participation in negotiations for a plan for maintaining jobs in a company or a social plan
- Right of notifying all employer subsidy requests in the areas of partial or intermittent unemployment and involuntary layoffs
- Right to notify employers' intentions of undertaking special general interest works
- Early retirement under the solidarity or progressive schemes: Delegations are consulted in establishing priority criteria for admitting employees into these programmes, but only in companies where there exists no joint works councils
- Early retirement for shift and night workers: Employers consult employee delegations to establish a list of employees that are candidates for early retirement in their companies, in preparation for submitting them to the Labour Ministry for approval
- ITM inspections: Employee delegation chairs must be advised of the presence of inspectors on company premises. Chairs are entitled to be present during inspections, as may Equality and Health and Safety delegates

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## THE FOLLOWING AREAS OF AUTHORITY WILL BE ADDED AFTER THE 2018 SOCIAL ELECTIONS

Remember that beginning with the 2018 social elections, delegations in companies with more than 150 employees will take over the tasks that are currently being done in joint works councils, which will no longer exist after that time.

Joint works councils only exist in industrial, craft and trade companies of private sector. As from the 2018 social elections, all companies with over 150 employees are concerned alike, included non-profit organizations, foundations and employers of public sector.

### Information and consultations in technical, economic and financial areas within companies of at least 150 employees as from the 2018 social elections

#### *Company plant, work equipment and working methods*<sup>28</sup>

Company directors must inform and consult with employee delegations prior to making any major decision dealing with the following:

- Construction, transformation or extension of production or administration facilities
- Introducing, improving, renewing or converting company plant.
- Introducing, improving, renewing or converting work methods and production procedures, except for any that would reveal manufacturing secrets

Company directors are obliged to inform employee delegations with regard to the impacts of the measures cited above on working conditions and environments.

#### *Labour requirements*

In general, company directors shall inform and consult with employee delegations at least once yearly with regard to current and foreseeable labour requirements in the company, and especially with regard to professional training, improvement and re-education measures that may stem from these and impact the company's employees

#### *Economic and financial decisions that may have an impact on jobs*<sup>29</sup>

Employee delegations must be informed and consulted on every type of economic or financial decision that may have a decisive impact on companies' structure or jobs.

<sup>28</sup> New Art. L.414-5 of the Labour code

<sup>29</sup> New Art. L.414-6 of the Labour code

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This is especially true for decisions that concern production and sales volumes, production programmes and gearing, investment policies, plans for halting or transferring companies or parts of companies, plans to restrict or extend the business of companies, plans for mergers or for changing company structures or the establishment, modification or cancellation of a complementary pension scheme.

Information and consultation here must necessarily pertain to the repercussions of measures under consideration on the volume and structure of personnel as well as on working conditions and the work of staff in companies. They will also pertain to social measures, especially professional training and re-education that are being taken or considered by company directors.

The information and consultation phase will in principle occur prior to making any decision. This will not however occur where such actions could impede the management of a company or of a part of a company, or where it could compromise the achievement of a planned operation. In this case, company directors must provide all required information and explanations to employee delegates within 3 days.

### ***Economic and financial change within companies*<sup>30</sup>**

Company directors must inform and consult with employee delegations in writing at least twice yearly with regard to economic and financial changes occurring within companies.

To this end, company directors will submit a report on their companies' entire business to employee delegations that includes sales figures, overall production and operations results, orders, changes in the structure and amounts of employee compensation and capital expenditure programmes completed.

Where companies are organized as joint stock corporations, non-profit associations, cooperatives or foundations, management is furthermore obliged to communicate profit and loss statements, the annual report, statutory auditors' report, the board of directors' or Management report and any other document to be submitted to shareholders' meetings or decision making entities to employee delegations prior to presenting this information at general shareholding meetings or to decision making entities.

### ***Diverging positions*<sup>31</sup>**

Where, when divergent positions arise between company directors and employee delegations, such divergences must be brought to the attention of the board of directors, or if appropriate, to the manager(s).

Where companies are not organised as joint stock corporations, diverging positions must be brought to the attention of the company director if this person did not personally participate in discussions.

In all events, company directors, boards of directors, decision making entities or managers must report on the how the stances expressed are to be dealt with and provide justification for subsequent action.

### **Participation in certain company decisions within companies of at least 150 employees<sup>32</sup>**

In companies that employ at least 150 persons over the twelve months previous to the first day of the month in which elections are announced, without prejudice to the application of other legal or contractual provisions, decisions pertaining to the following issues must be taken jointly between employers and employee delegations:

1. The introduction or application of technical installations whose purpose is to check the behaviour or performance of employees at their workstations
2. The introduction or modification of health and safety measures of employees as well as the prevention of occupational illness
3. The establishment or modification of overall criteria pertaining to personal selection for hiring, promoting, transferring, dismissing and, if appropriate, priority criteria for admitting employees to pre-retirement programmes
4. The establishment and implementation of any professional continuing training programme or collective action

<sup>30</sup> New Art. L.414-6 of the Labour code

<sup>31</sup> New Art. L.414-8 of the Labour code

<sup>32</sup> New Art. L.414-9 of the Labour code

5. The establishment or modification of overall evaluation criteria for employees
6. The establishment or modification of internal rules taking into account any collective bargaining agreements in effect
7. The granting of awards to employees who, through their initiative or recommendations for technical improvements have proven particularly useful to companies, without prejudice to laws and regulations on patents or inventions
8. The implementation of a data processing system for personal information with the purpose of monitoring them in the workplace, where this is justified by one of the following reasons:
  - The requirements of the health and safety of employees
  - Temporary verification of the production or services of an employee, where such a measure is the only method for determining exact compensation, or
  - Work organisation on a flexible time schedule.

**Implementing employee delegations' rights to participate<sup>33</sup>**

A meeting about delegation rights to participate shall be held between employers and employee delegations at least one time per quarter.

The purpose of such meetings shall be to discuss the points that delegations have the right to participate in, with the objective of arriving at an agreement.

Companies are represented at these meetings by company directors or their delegates and they have the option of having other people of their choosing attend, provided that the number of persons in attendance representing the company does not exceed delegation numbers.

Delegation chairs and company directors shall draft the meeting agenda jointly, which will be submitted to employee delegation members at least five days prior to the meeting.

All shall place issues on the agenda that are specified in requests submitted by at least half of employee delegates or by company directors 3 days prior to meetings. When parties cannot agree on one of the decisions to take with regard to the agenda, employee delegations will mandate the board to carry out negotiations and arrive at a decision with employers.

The board can bring in a maximum of four advisors to assist, including at least one from each trade union with general nationwide or sector representation and which obtained at least twenty per cent of elected members at the most recent elections.

The board will communicate joint decisions within 48 hours to employee delegations.

Upon reception of this information, employee delegates have 48 hours to formulate a duly substantiated request for renegotiation of one or several issues to be decided upon.

Meetings shall be held in camera during working time.

Company directors must furnish a suitable location and equipment necessary for meetings.

Decisions regarding employees' right to participate shall be made jointly between company directors and employee delegations, or between employers and the board, with each party having one vote.

In the event of disagreement regarding one of the measures outlined in article L.414-9, such disputes may be submitted for mediation by employers, delegations or board.

All the discussions taking place during meetings shall be consigned to minutes for the meeting and countersigned by company directors or their representatives and the president of employee delegations or their representatives.

Employee representatives shall make regular reports to delegations in economic and social entities and to the equality delegate regarding the outcome of discussions held in these meetings.

They will submit an updated list of general criteria to equality delegates concerning:

- The establishment or modification of overall criteria pertaining to personal selection for hiring, promoting, transferring, dismissing and, if appropriate, priority criteria for admitting employees to pre-retirement programmes

<sup>33</sup> Art.L.414-10 to L.414-13 (as from the 2018 social elections)

- The establishment or modification of overall evaluation criteria for employees.

This stands, despite employers who may argue that the information is subject to appropriate confidential treatment.

In this case, equality delegates shall be held to secrecy concerning these criteria, except to solicit the Labour and Mines Inspectorate regarding those who violate the principle of equal treatment.

### **Other specific consultation assignments in all companies**

In all companies, including those with fewer than 150 employees, employee delegations will undertake the tasks listed below, at present assumed by joint works councils, where they exist, and if not, by employee delegations.

#### ***Temporary work, temporary use of labour and part-time work***<sup>34</sup>

Employee delegations must be informed and consulted previously.

Data processing systems for personal information with the purpose of monitoring in the workplace

#### ***Early retirement under the solidarity or progressive schemes***<sup>35</sup>

Delegations are informed previously where employers intend to implement data processing of personal data for monitoring purposes in the workplace

#### ***Occupational health services***<sup>36</sup>

Delegations may request occupational physicians to carry out medical examinations. They will have the right to access and comment on annual reports of occupational physicians prior to transferring them to the Health directorate, and will also be entitled to receive lists of jobs that are dangerous for pregnant women.

#### ***Early retirement under the solidarity or progressive schemes***<sup>37</sup>

Priority criteria for admission into early retirement programmes are established by collective bargaining agreements or agreements made by companies, the minister or by joint works councils. Should no joint works councils exist, employers establish the priority criteria following consultation with competent employee delegations.

From now on, the priority criteria will be established by collective bargaining agreements or by agreements made between companies and the minister. In companies employing at least 150 persons, this is done according to the rules for participation of employee delegations.

In companies employing fewer than 150 persons, employers establish priority criteria following consultation with employee delegations.

### **Proposals for company auditors in public limited companies with employee representatives in the management bodies of the company**<sup>38</sup>

Before the reform, auditors were appointed by the general meeting of shareholders on recommendation of the joint works councils.

After the 2018 social elections, auditors will be appointed by the general meeting of shareholders on recommendation of employers subsequent to the employee delegation participation procedure.

<sup>34</sup> Articles L.134-1 and L.123-2 of the Labour Code

<sup>35</sup> Article L.261-1 of the Labour Code

<sup>36</sup> Articles L.322-2, L.326-5 and L.334-1 of the Labour Code

<sup>37</sup> Articles L.581-4 and L.584-5 of the Labour Code

<sup>38</sup> Article 4 of the law dated 23 July 2015 and article 69 of the amended law of 19 December 2002 on the Trades and Companies Registry and accounting and annual financial statements in companies

## 1.6. The Health and Safety delegate<sup>39</sup>

### **Appointment**

Each employee delegation designates a Health and Safety delegate **from amongst its members or from amongst employees** during the founding meeting. Company directors and the Labour and Mines Inspectorate shall be informed in writing with regard to the appointment of the Health and Safety delegate within 3 days.

Where a Health and Safety delegate is not an elected member of the delegation, that person may attend all concerned delegation meetings in an advisory capacity.

### **Rights and responsibilities of the Health and Safety delegate**

Health and Safety delegates record the results of their observations in a special registry to be kept on companies' premises that is countersigned by department heads. Delegate members and Labour Inspectorate personnel shall be able to consult this registry.

In urgent cases where observations require immediate action by the Labour and Mines Inspectorate, Health and Safety delegates may directly address that administration, provided they simultaneously inform company directors or their representatives and employee delegations.

Company directors must **inform and consult** with employee delegations with regard to:

1. Evaluating risks to health and safety on the job, including those concerning groups of employees facing specific risks
2. The protection measures to be implemented and, if necessary, any protective equipment to be used
3. Statements to be submitted to the Labour and Mines Inspectorate concerning work accidents
4. Any action that could have substantial impacts on health and safety
5. Appointments of employees designated as responsible for protection activities and professional risk prevention actions of the company
6. First aid, fire safety and employee evacuation measures, which are necessary and in line with the businesses and size of companies and/or entities, and that take into account other persons who may be present
7. Measures intended to organise necessary relationships with external services, especially in the areas of first aid, emergency medical services, rescue services and fire fighting
8. Use of skills within the company and skills outside of the company in organising protection and prevention actions
9. Suitable training dispensed to all employees to safeguard their health and safety
10. Evaluating risks that the business of companies may present for the environment in as much as health and working conditions are concerned
11. Measures in favour of the protection of the environment, in as much as health and working conditions are concerned.

Health and safety delegates have the right to request that employers take appropriate measures and to submit recommendations for this with the purpose of mitigating all risks run by employees and to eliminate sources of danger.

Health and Safety delegates particularly monitors adherence to rules protecting the interests of young employees<sup>40</sup> and pregnant women<sup>41</sup>.

An example of this is their duty to attend instructions given by employers to teenagers when they first begin to work. They may consult registries listing adolescents employed in companies, their working hours, their

<sup>39</sup> New art. L.414-14 of the Labour Code (former article L.414-2 of the Labour Code)

<sup>40</sup> Articles L.344-2 and L.344-3 of the Labour Code

<sup>41</sup> Article L.334-1 of the Labour Code



overtime hours, hours they work on Sundays and holidays, dates of their medical examinations and copies of their latest medical certificates prepared by occupational physicians.

They also receive copies of lists of work that is dangerous for pregnant women.

### ***Collaboration with designated employees***

Health and Safety delegates work in close coordination with all designated employees.

### ***Inspections***

Every week, Health and Safety delegates may carry out an inspection accompanied by company directors or their delegates, at company headquarters and on work sites or other temporary work locations of companies.

In administrative departments, no more than two inspection tours may be conducted per year.

Managers of companies who are being inspected and maintenance managers attend the inspection.

### ***Assistance of ITM inspectors***

Inspectors and verification staff from the Inspectorate of Labour and Mines have the right to bring along Health and Safety delegates during inspections. Likewise, this staff may request assistance during accident investigations.

### ***Maintenance of salary***

Health and safety delegates may not be subject to loss of compensation due to their absence from duties arising for inspection tours or assistance given to inspection and verification staff from the Labour and Mines Inspectorate.

### ***Leave for training***

Employers must provide Health and Safety delegates time, known as training leave, to participate in training courses without loss of salary, which are set up by trade union organisations or specialised institutions during working hours, and are intended to improve knowledge in the area of Health and Safety at work.

This leave for training is apart from leave for training for employee delegates and may not be counted against paid annual leave.

The duration of this leave for training is 40 hours per term, with 10 additional hours for an initial term in the company where it occurs.

It is considered equivalent to a work period and compensation relating to it is paid by the State for companies whose total number of employees is not greater than fifty.

A Grand Duchy regulation will set the procedures for this specialist course and will increase the time for it if exceptional circumstances arise due to changes in the work location.

## 1.7. The Equality delegate<sup>42</sup>

### ***Designation***

Each employee delegation designates an Equality delegate from amongst full or alternate members during the founding meeting for that person's entire term. The company director and the Labour and Mines Inspectorate shall be informed in writing about this appointment within 3 days.

### ***Mission***

The mission of the Equality delegate is to **ensure equal treatment of men and women at work** with regard to access to jobs, training and professional advancement, as well as compensation and working conditions.

<sup>42</sup> New article L.414-15 of the Labour Code (former article L.414-3 of the Labour Code)

To this end, without prejudice to functions that may be incumbent upon delegates through other legal provisions, such delegates act alone or together with employee delegations in all areas of responsibility, and are especially authorised to:

1. Issue opinions and make recommendations on all issues dealing directly or indirectly with one of the above mentioned areas
2. Recommend awareness actions for salaried employees of companies to employers
3. Draft and submit a plan with measures intended to promote equal opportunities for men and women to employers
4. Submit all individual or collective complaints in the area of equal treatment of men and women to employers
5. Anticipate and smooth out individual and collective disputes that may arise between employers and staff in the area of equal treatment of men and women
6. If no resolution of above-mentioned disputes occurs, submit all complaints or remarks to the Labour and Mines Inspectorate; to assist the Labour and Mines Inspectorate during inspection visits in companies
7. Interview staff of both genders separately once per year
8. Ensure training on equality is provided to apprentices in companies
9. To assist in establishing and carrying out all initial professional training programmes, especially apprenticeships
10. Provide consultations in an appropriate location for company personnel, either during and outside of working hours. If consultations occur during working hours, equality delegates must agree on the time with company directors and on how to set up the consultations, the time for which is allotted to the delegates credited hours
11. Give an opinion on all new part-time jobs created inside the company.

Furthermore, Equality delegates have a role to play in the area of **sexual harassment**<sup>43</sup>.

Equality delegates, or if one is lacking, employee delegations, are responsible for monitoring the protection of employees against sexual harassment in daily working relations. To this end, they recommend all actions they feel necessary to employers.

Employee delegations and Equality delegates are authorised to assist and advise workers who are subject to sexual harassment.

They are required to keep confidential all facts that they have knowledge of in this area, unless they have been released of this obligation by the person undergoing harassment.

Employees who are victims of sexual harassment are entitled to be accompanied and assisted by a delegate in interviews with employers or their representatives, which take place as part of inquiries into sexual harassment.

Equality delegates may also be consulted on **positive action projects** prior to their implementation by employers<sup>44</sup>.

### ***Time-off rights***

In order to accomplish the tasks outlined in this article, equality delegates receive a specific number of time-off rights in the form of hours:

- 4 hours paid per month, if a company employs **between 15 and 25 persons** during the twelve months preceding the first day of the month in which elections are announced
- 6 hours paid per month, if a company employs **between 26 and 50 persons** during the twelve months preceding the first day of the month in which elections are announced
- 8 hours paid per month, if a company employs **between 51 and 75 persons** during the twelve months preceding the first day of the month in which elections are announced

<sup>43</sup> Article L.245-6 of the Labour Code

<sup>44</sup> Article L.243-3 of the Labour Code

- 10 hours paid per month, if a company employs **between 76 and 150 persons** during the twelve months preceding the first day of the month in which elections are announced
- 4 hours paid per week, if a company employs **over 150 persons** during the twelve months preceding the first day of the month in which elections are announced

These additional credited hours are reserved exclusively for use by Equality delegates.

### **Leave for training**

Employers must allow Equality delegates time, known as training leave, to participate in training courses without loss of salary that are set up by trade union organisations or specialised institutions during working hours, intended to improve knowledge in the areas of economics, law, the social area and psychology that are needed to accomplish their tasks.

Equality delegates therefore have two half-days during working time of leave for training per year, which are not deducted from their annual leave.

The duration of leave for training is equivalent to a work period and compensation relating to it is paid by the State for companies whose total number of employees is not greater than 150.

Where designated equality delegates are alternate delegation members, they may participate in all decisions related to their particular mandate and they may attend all meetings of the delegation concerned in a consultative capacity.

## 1.8. Posting of announcements and access to personal files

### **Posting of delegation announcements<sup>45</sup>**

The displaying of announcements, reports and stances of employee delegations, the Equality delegate and the Health and Safety delegate may be done freely through various formats accessible by personnel for this use, to include electronic formats, provided they deal with issues having a direct relationship with their duties.

Delegates elected from:

- A list submitted by a trade union organisation that has general nationwide and sector representation
- A list submitted by another trade union organisation provided that its delegates represent an absolute majority of members making up the delegation

may also:

- Freely display trade union announcements on various formats that are different from those cited above. Copies of these trade union announcements are transmitted to company directors simultaneous to displaying them
- Freely circulate publications and tracts from the trade union to company employees on the firm's premises and in locations agreed to jointly with company directors.

Members of employee delegations have the right to contact all company employees. As such, they are authorised to move freely within the company, on its work sites or other temporary work locations, and to come into contact with the employees after having informed the employer. They also have the right to contact them via all communications methods available in the company.

### **Access to personal files<sup>46</sup>**

All employees have the right to access personal files that concern themselves, twice yearly and during working hours. On this occasion, they may request assistance from a delegation member or the Equality delegate, who are required to keep the content of personal files secret to the extent that they are not freed of this obligation by the employees concerned.

<sup>45</sup> New article L.414-16 of the Labour Code (former article L.414-6 of the Labour Code)

<sup>46</sup> New article L.414-17 of the Labour Code (former article L.414-7 of the Labour Code)

Explanations of employees concerning the content of their personal files must be included in the files upon request by the interested party.

If these rules are not adhered to, employers risk imprisonment of 8 days to 6 months and a fine of € 500 to € 5,000.

## 1.9. Status of employee delegates

### 1.9.1. Responsibilities of delegates<sup>47</sup>

#### **Internal rules**

Employee delegation members shall adhere to internal company rules or those of an entity in performing their duties.

The new law also stipulates that internal rules and procedures may not impede the performance of duties by employee delegates.<sup>48</sup>

#### **Right to leave workstations**

Employee delegates have the right to leave their workstation without reduction in pay as necessary to perform their duties as conferred by law, after informing company directors and provided that their absence does not impede the proper functioning of the company.

#### **Professional secrecy**

Members of employee delegations, as well as their advisors and experts, are bound to professional secrecy with regard to all issues related to manufacturing processes

Furthermore, they are bound to keep secret all confidential information that is expressly qualified as such by company directors or their representatives in the legitimate interest of the company, both with regard to employees and to third parties, except where employees or third parties are themselves bound by an obligation of confidentiality.

Company directors may refuse to communicate information or to begin consultations where their nature is such that according to objective criteria they would seriously impede the functioning, management or future of the company, could cause harm to these or could compromise a planned operation.

Delegation members who consider it abusive to classify certain information as confidential or to refuse to communicate information respecting consultations on grounds of confidentiality may submit the issue to the Director of the Labour and Mines Inspectorate within two weeks.

The Director's decision on this type of issue, or that of his or her delegate, must be submitted to all parties no later than the eighth day following the sending of the request. The decision shall be in written form and duly substantiated, taking into account the interests and requirements of employees and their representatives, as well as the economic requirements and constraints company directors must take into account in their management of a company or as part of their exercise of power as head of a company in accordance with the principles of prudent management.

The decision of the Director of the Labour and Mines Inspectorate or of that person's delegate may be appealed in an Administrative Court within two weeks of its notification.

Failure to adhere to these obligations is punishable by imprisonment from 8 days to 6 months and a fine of € 500 to € 5,000.

<sup>47</sup> Art. L.415-1 and Art. L.415-2 of the Labour Code

<sup>48</sup> New article L.417-1 of the Labour Code

### 1.9.2. Duration and end of the term of a mandate<sup>49</sup>

Remember that delegates are elected in principle for a term of five years and that their mandate is renewable.

However, a mandate may end under the following circumstances.

1. Where a member fails to get re-elected as a full or alternate member, once the delegation is set up
2. When a member is no longer an employee
3. Should a member resign
4. When the trade union organisation that presented a member's nomination informs a company director and the delegation that the member no longer belongs to that trade union
5. In the event of death
6. In the event a member's right to work is refused, not extended or withdrawn.

Alternate members take the seats of full members as replacements:

1. If the full member has an impediment
2. If a full member's term ends due to any of reasons 2 through 6 stated above. In this case, alternate members complete the term of the full member.

### 1.9.3. Exercise of office<sup>50</sup>

Company directors must grant delegates the necessary time to perform their duties and they must compensate this time as working time.

#### ***Delegation time-off rights***

**In companies with represented staff fewer than 150 employees**, the company director allots employee representatives time-off rights proportional to the number of employees a delegate represents, based on forty hours per week for 500 employees.

**In companies with represented staff between 150 and 249 employees**, the company director allots employee representatives total time-off rights proportional to the number of employees a delegate represents, based on a credit of forty hours per week for 250 employees.

In application of the provisions of the preceding paragraphs, fractions of hours equal to or greater than one half are rounded up to the next full number. Fractions of hours under one half are rounded down to the next full number.

The above time-off rights are distributed proportionately to votes recorded amongst all of the voting lists that obtained at least 20% of seats at the election.

<sup>49</sup> Art. L.415-3 et Art. L.415-4 of the Labour Code

<sup>50</sup> Art. L.415-5 et Art. L.415-9 of the Labour Code



**Weekly time-off rights awarded to employee delegates**

PRIOR TO REFORM			BEGINNING AS FROM 1 JANUARY 2016		
Staff in establishments	Number of delegates	Weekly time-off rights	Staff in companies	Number of delegates	Weekly time-off rights
15	1	1	15	1	1
20	1	2	20	1	2
40	2	3	40	2	3
60	3	5	60	3	5
80	4	6	80	4	6
100	4	8	100	4	8
120	5	10	120	5	10
140	5	11	140	5	11
160	5	13	149	5	12
180	5	14	150	5	24
200	5	16	160	5	26
220	6	18	180	5	29
240	6	19	200	5	32
260	6	21	220	6	35
280	6	22	240	6	38
300	6	24	249	6	40
320	7	26			
340	7	27			
360	7	29			
380	7	30			
400	7	32			
420	8	34			
440	8	35			
460	8	37			
480	8	38			
500	8	40			

**Full-time delegates in companies with at least 250 employees**

**Number of full-time delegates**

A company director must free generally from all normal duties and give a permanent exemption from service with full salary, as well as the right to promotion and advancement, as appropriate, to:

- 1 delegate where a company has between 250 and 500 employees
- 2 delegates, where a company has between 501 and 1,000 employees
- 3 delegates, where a company has between 1,001 and 2,000 employees
- 4 delegates, where a company has between 2,001 and 3,500 employees
- 1 additional delegate by group of 1,500 employees, where employee numbers exceed 3,500.

### **Appointment of full-time delegates**

Full-time delegates are elected via secret list ballot by delegate members in accordance with the rules of proportional representation.

However, where there are more than 1,000 employees, the trade union organisations with nationwide coverage represented in the delegation and bound to a company by a collective bargaining agreement each designate one of the delegates to be released from duty.

### **Conversion of full-time delegates**

A delegation may decide to convert one or several full-time delegates into time-off right, on the basis of forty hours per freed up delegate, and proportional to votes obtained in the election.

The delegation informs the company director of this.

### **Maintenance of salary**

Delegation members may not be paid compensation inferior to that they would have received if they had worked during the time they worked on delegation business.

### **Delegate careers**

An agreement is to be drawn up between company directors and employee delegations that deals with the theoretical development of the careers of delegates whose credited hours represent at least 50% of their normal work time, with relation to a benchmark group of employees and establish measures for fully reintegrating these delegates into their former jobs or an equivalent job during or at the time of the end of their term as delegates.

This agreement will also regulate participation of all delegates in continuing professional education offered by the company, especially training related to the job held prior to the term and, if necessary, training for a new, equivalent job to be held during or at the end of a delegate's term.

### **Right to meetings<sup>51</sup>**

Employee delegations are entitled to meet once monthly during working hours, provided warning is given to management five working days before, unless agreement is reached on a shorter period. Delegations must still hold six meetings during business hours per year, of which 3 are held jointly with company management.

Time spent in meetings is compensated as working time.

The primary employee delegation may meet in full assembly with company employees once yearly. This assembly is held in camera and is called by the delegation president.

Company directors may be invited to attend or send a representative.

### **Consultation hours<sup>52</sup>**

Employee delegations may set up consultation hours for company employees in delegations' premises.

When delegations have one or more full-time delegates, these consultations are carried out during working hours at time slots set by delegations and relayed to company directors.

Delegations that do not have a full-time delegate may hold consultation hours either outside of or during working hours. If consultations are held during working hours, delegations must determine with company directors what hours are available and how the time spent by members of delegations on consultation hours will be credited as time-off rights.

<sup>51</sup> New articles L.415-6 and L.415-7 of the Labour Code (former articles L.415-6 and L.415-8 of the Labour Code)

<sup>52</sup> New article L.414-8 of the Labour Code (former articles L.415-9 of the Labour Code)

### ***Leave for training***<sup>53</sup>

Employers must allow full and alternate delegates time, known as training leave, to participate in training courses without loss of salary that are set up by trade union organisations or specialised institutions, including professional chambers, at times coinciding with working hours, intended to improve economic, social and technical knowledge with regard to their roles as employee representatives.

#### **Companies with between 15 and 49 employees**

In companies that employ between 15 and 49 persons over the twelve months preceding the first day of the month in which elections are announced, full members of employee delegations are entitled to one week of leave for training each during their term, with related salary expenses paid by the State.

#### **Companies with between 50 and 150 employees**

In companies that employ between 50 and 150 persons over the twelve months preceding the first day of the month in which elections are announced, full members of employee delegations are entitled to two weeks of leave for training each during their term, with salary expenses for one week of leave for training paid by the State.

#### **Companies with over 150 employees**

In companies that employ over 150 persons over the twelve months preceding the first day of the month in which elections are announced, full members of employee delegations are each entitled to one week of leave for training per year.

#### **New terms**

Delegates elected for the first time are entitled to an additional 16 hours of training during the first year of their term.

#### **Alternate delegates**

Alternate delegation members are entitled to one half of training hours outlined in this paragraph.

When these alternate members accede to full-time members during their term, the portion of training hours already taken in application of the provisions of the preceding paragraph is deducted from training they are entitled to as full members.

#### **Eligible training programmes**

Time under leave for training may not be considered as annual paid leave: it is equivalent to work time.

Leave for training benefits are granted by company directors each year, at the request of delegates who wish to participate in certified training programmes as part of a list drawn up by joint agreement by profession employer or trade union organisations that have general nationwide or sector representation.

Specific requests may be submitted to the Labour minister, who certifies such training.

## **1.9.4. Special protection**

### ***Protection for employee delegates against modifications to essential elements of their employment contracts***<sup>54</sup>

Throughout their entire terms, neither the work contracts of full or alternate members of employee delegations, nor of the Health and Safety delegate may be subject to any change of a basic clause that would bring into play article L.121-7 of the Labour Code<sup>55</sup>.

<sup>53</sup> New article L.415-9 of the Labour Code (former articles L.415-10 of the Labour Code)

<sup>54</sup> New article L.415-10 of the Labour Code

<sup>55</sup> All modifications unfavourable to employees regarding an essential clause of their work contracts must be notified to employees in the manner and within the time period stipulated in articles L.124-2 and L.124-3, with effective date stated; if this does not occur, the modifications have no legal effect. Upon notification, employees may request that employers state the reasons for the modification and employers must do so in the manner and within the time



If necessary, these delegates may by simple request, ask the President of Labour Court to duly summon the parties involved and to rule on a summary and urgent basis with a view to halting any unilateral modification of such a clause.

### **Protection against dismissal<sup>56</sup>**

#### **The principle**

Delegates may not be subject to a dismissal process or a summons to a meeting preliminary to dismissal, even for serious misconduct, during the legal protection period.

There are two options:

- **Cancellation procedure**

In the month following the dismissal, delegates may by simple request, ask the President of Labour Court to duly summon the parties involved and to rule on a summary and urgent basis to nullify the dismissal and order that delegates be kept in their jobs or, if applicable, be reinstated in them

- **Alternative solution: An application for damages**

Delegates who do not apply for cancellation of the dismissal process may solicit the court to declare the contract void on the day dismissal was notified and to order the employer to pay damages that also acknowledges the specific damages suffered by a dismissal that is null and void with relation to the status of delegate under special protection. Delegates who choose this option are considered unemployed through no fault of their own beginning from the date of dismissal.

Legal action to compensate for possible abusive termination of a work contract must be presented to the Labour court within 3 months from the date dismissal was notified, failing which the claimant shall be precluded from filing.

**Note:** Accepting either a cancellation or damages option is irreversible.

#### **Closing of a business**

From now on, the law stipulates that when a business closes down, delegates' terms end automatically with the halt of business activities.

#### **Suspension for serious misconduct**

If serious misconduct is evoked, company directors have the option of removing a delegate's work contract. Such a decision must accurately state the acts that delegates are accused of and surrounding circumstances, to which the serious nature of the charges are attributable.

The act or acts that may justify a judicial rescission on grounds of serious misconduct may not be evoked after one month beginning from the day on which the party who lays charges discovers them, unless such acts only occurred during the month of prosecution.

The period of one month is not however applicable when a party evokes prior acts or misconduct to support a new act or new case of misconduct.

Delegates retain their salaries, including all other allowances and benefits to which they are entitled under their former contracts for a period of 3 months following the date of notification. Such salaries, allowances and other benefits are definitively retained by delegates.

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*period stipulated by article L.124-5.*

*Immediate modifications for serious causes must be notified to employees in the manner and within the time period stipulated by articles L.124-2 and L.124-10, otherwise they will have no legal effect.*

*Termination of work contracts stemming from employees' refusal to accept modifications notified to them are dismissals entitling persons to initiate legal action as stated in article L.124-11.*

*The provisions of this article do not apply in cases of internal reclassification in the meaning of Book V, Title V, concerning jobs for employees unable to perform the duties of their last job.*

<sup>56</sup> New article L.415-10 of the Labour Code (former article 415-11 of the Labour Code)

- In the month following the eviction, delegates may by simple request, ask the President of Labour Board to duly summon the parties involved and to rule on a summary and urgent basis to determine whether to maintain or suspend payment of salaries beyond the 3-month limit while awaiting the final resolution of the dispute.
- Delegates who do not wish to remain employed or to rejoin the company may solicit the court to terminate the contract within 3 months of notification of suspension and to seek a court ruling ordering the employer to pay damages acknowledging specific damages suffered by the termination of the contract with relation to the status of delegates under special protection.

Delegates who choose this option are considered unemployed through no fault of their own.

**Note:** The choice of either of these options is irreversible.

- Employers may request a judicial rescission on a work contract from the Labour Court, or by counterclaim as the case may be, no later than one month beginning from the date of the summons to appear before the Labour Court President.
  - Should the Labour Court deny the request, the impact of the exemption terminates automatically.
  - Should the Labour Court approve the request, termination takes effect on the date of the suspension notice.
- If an employer does not initiate this procedure within the specified period, an employee may by simple request, ask the President of Labour Court to issue a ruling on a summary and urgent basis and within two weeks following the expiration of the deadline, to order the contract to remain in force for all parties in the case, or if an employee no longer wishes to remain or be reinstated at work, to solicit the Labour Court seek a court ruling ordering the employer to pay damages, acknowledging specific damages suffered by the termination of the contract with relation to the status of delegates under special protection. Delegates who choose this option are considered unemployed through no fault of their own.

### ***When delegates who are suspended from their positions find a new job***

When delegates who have been removed from their job take on a new job with compensation, either in a salaried or non-salaried position, employers may seek the suspension of wages before the Labour Court President.

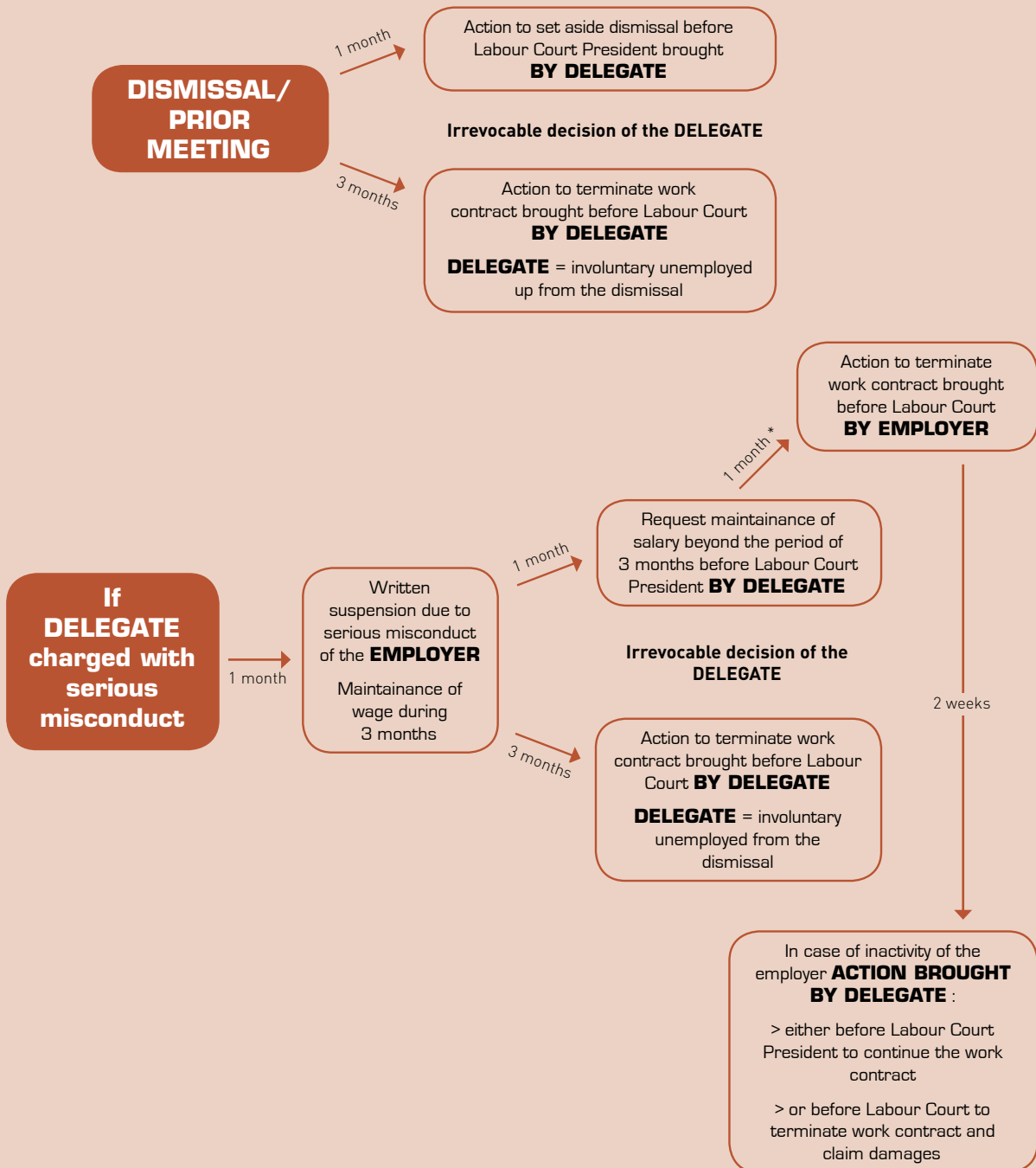
### ***When delegates whose contracts have been terminated are ordered to reimburse salaries paid in the interim***

Delegates whose contracts were terminated by the Labour Court for whom the President ordered maintaining salary payments up until final resolution of dispute and who are ordered to reimburse these interim salary payments to their employer may request of the Director of the National Employment Agency to place them on the unemployment rolls for full benefits retroactively up until the date of final resolution of the dispute.

Delegates in this situation must prove that they have fully or partially repaid interim salaries prior to receiving retroactive unemployment benefits. In the absence of proof of full compliance with court orders and upon request by employers of delegates in this situation, the Director of the National Employment Agency will transfer the sum of unemployment benefits due to delegates directly to employers, up to the amount corresponding to the court order that remains due.

This eligibility for full unemployment benefits is a legal right, unless the delegate has been convicted of a crime by a final court judgment, for the same acts that justified that delegate's removal. If this conviction occurred after the payment of all or part of the full delegate's full unemployment benefits, the delegate must repay the funds paid out by the Employment Fund for that purpose.

AS FROM 1 JANUARY 2016



\* Employers may request a judicial rescission on a work contract from the Labour Court, or by counterclaim as the case may be, no later than one month beginning from the date of the summons to appear before the Labour Court President.

**Note:**

- All of these provisions are applicable to dismissals of former employee delegation members<sup>57</sup> and former Health and Safety members for the first six months following the expiration or termination of their terms, as well as to candidates to the functions of delegation members, from the time they stated their candidacies and for a period of 3 months. If elections are contested and followed with new elections, this period is extended up until the date of the new elections.
- During the entire duration of this procedure, time-off rights intended for the delegate shall be transmitted, if needed, to the delegation remaining in place, which distributes them amongst its members.

## 1.10. Organisation and functioning<sup>58</sup>

Employee delegations designate a President, a Vice-President and a Secretary from amongst its members by means of a secret ballot, by relative majority. In the event of a tie, the eldest candidate is elected.

In expediting routine business and preparing for meetings, the delegation shall designate a board from amongst its members by secret ballot, by list, according to the rules of proportional representation, to be made up of:

- 3 members, where the delegation is made up of at least 9 members
- 5 members, where the delegation is made up of at least 12 members
- 7 members, where the delegation is made up of at least 16 members
- 9 members, where the delegation is made up of at least 22 members

The President, a Vice-President and the Secretary are full members of the delegation board.

In delegations made up of fewer than nine members, the President or the Vice-President make up the delegation's board as of right.

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### BEGINNING WITH THE 2018 SOCIAL ELECTIONS<sup>59</sup> THE RULES WILL DIFFER SLIGHTLY

During the founding meeting, which is called by the employee representative who obtained the highest number of votes in the vote during the month following elections, employee delegations designate a President and a Secretary from amongst its full members by means of a secret ballot, by relative majority. In the event of a tie, the eldest candidate is elected.

If no elections are held, the founding meeting shall be called by the eldest full delegate in the same manner.

A Grand Duchy regulation shall determine the mandatory agenda items in order for founding meetings as well as the conduct of the meeting.

In expediting routine business and preparing for meetings, the delegation shall designate a board from amongst its full members by secret ballot, by list, according to the rules of proportional representation, to be made up of the following, in addition to the President, the Vice-President and the Secretary:

- 1 member, where the delegation is made up of at least 8 members
- 2 members, where the delegation is made up of at least 10 members
- 3 members, where the delegation is made up of at least 12 members
- 4 members, where the delegation is made up of at least 14 members.

The board is increased by at least one employee representative for its assignments in the area of participation rights, proportionate to votes obtained by each list of candidates represented in the employee delegation that is not yet represented in the board.

<sup>57</sup> New article L.415-11 of the Labour Code (former article L.415-12 of the Labour Code)

<sup>58</sup> Article L.416-1 of the Labour Code

<sup>59</sup> Article L.416-1 of the Labour Code

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The delegation Board shall submit in writing the names of the Vice-President, the Secretary and those of the board members to company directors and to the Labour Inspectorate within 3 days of the founding meeting.

During the first meeting following the founding meeting of the employee delegation, elected members are informed by the company director of the company's organisational structure, any ties it has with other companies, foreseeable economic changes, employment structure, professional continuing education policies, health and safety on the job and policies for equal treatment of employees.

### **Deliberations<sup>60</sup>**

The subject of deliberations within the employee delegation is set by means of a meeting agenda, which will be determined by the delegation's board and communicated to employee delegation members at least five days prior to the meeting.

The board shall place issues on the agenda that are specified in requests submitted by at least one third of the members of employee delegates, no later than 3 days prior to meetings. Should this request be presented following communication of the agenda to delegation members, the delegation President must communicate it to members within twenty-four hours.

### **Calling delegation meetings<sup>61</sup>**

Employee delegations meet following a written summons from their Presidents.

Delegation Presidents must call delegations to meet at least six times yearly.

Presidents are furthermore required to call a meeting of delegates each time that at least one third of full members comprising delegations request so in writing. Those requesting meetings indicate the issues they wish to be on the agenda at the meeting.

Company directors or their representatives may be invited by the delegation to participate in its discussions, although they may not vote.

The Minister of Labour may summon delegations for reasons he or she deem appropriate. The Minister may also delegate any official to attend meetings and this person must be permitted to make observations.

Company directors or their representatives must be invited to attend these meetings.

Delegation meetings are held in camera.<sup>62</sup>

### **Decisions<sup>63</sup>**

Decisions and resolutions made by employee delegations are done by majority of members present.

The Secretary produces minutes of each meeting.

Meeting minutes are read and approved at the opening of the following meeting and copies are submitted to company directors.

Delegation boards are responsible for publishing a press release that is posted on announcement boards.

### **Delegation costs<sup>64</sup>**

Delegate functions are purely honorific. Nevertheless, employers assume costs for subsistence and travel incurred by employee delegation members that directly relate to the exercise of their functions in the company, excluding costs relating to leave for training.

Employers will also facilitate travel between company entities and as required will place an appropriate means of transportation at delegates' disposal.

<sup>60</sup> Article L.416-2 du Code du travail

<sup>61</sup> Article L.416-3 du Code du travail

<sup>62</sup> Article L.416-4 du Code du travail

<sup>63</sup> Article L.416-5 du Code du travail

<sup>64</sup> Articles L.416-6 and L.416-7 of the Labour Code

Employee delegation meetings and consultations occur within company premises in an appropriate location with office costs, including IT equipment and access to internal and external means of communication, heating and light paid for by employers.

Where delegations include one or more full-time delegate, company directors are required to make available a permanent location with equipment and secretarial personnel, if necessary.

## 1.9. Resolution of disputes and legal remedy<sup>65</sup>

### **Establishment of a mediation commission**

Disputes in the area of:

- Rights to assistance from advisors and experts
- Withholding information by employers
- Regarding organisation and functioning of delegations

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- Economic and social entities<sup>66</sup>
- Participation rights for employee delegations<sup>67</sup>.

Disputes that are not certifiably resolved in the month following possible involvement by the Labour and Mines Inspectorate may, during the month following the issue of a certificate of non-resolution, be submitted to a mediation commission set up under a collective bargaining agreement, either at company level or sector level, or as part of an inter-professional dialogue agreement.

This commission is chaired by a mediator designated jointly by the parties in a collective bargaining or inter-professional dialogue agreement.

The mediator may bring in an employer representative and a delegation representative to facilitate the task.

The collective bargaining or inter-professional dialogue agreement also set which procedure to follow, what deadlines to adhere to, who pays costs and the other implementing provisions of this paragraph.

Where companies do not provide for a mediation commission, the parties may solicit the Director of Labour and Mines Inspectorate during the month following the issue of a certificate of non-resolution, who summons them within five days in order to designate a mediator.

In this case, mediators are chosen jointly from a list covering five-year periods that include six persons recommended by the Ministry of Labour and chosen by the Government.

If the parties cannot agree on the mediator, one is chosen by random from the six-person list.

Mediators may call in one or several experts to assist them. The mediator is assisted by a civil servant provided by the Labour and Mines Inspectorate to ensure secretary duties.

If mediation does not produce an agreement within 3 months of the appointment of a mediator, the mediator prepares a report outlining the areas of disagreement and then submits it to the parties and the Labour and Mines director.

We note that the Labour Court should remain the competent body for knowing disputes that may be submitted to the mediation commission, except with regard to participation rights of employee delegations, which fall under the sole competence of the mediation commission.

### **Labour and Mines Inspectorate**

The Labour and Mines Inspectorate is responsible for ensuring the application of the provisions of this heading and its implementing measures.

<sup>65</sup> Articles L.416-6 and L.416-7 of the Labour Code

<sup>66</sup> Articles L.417-1 to article L.417-5 of the Labour Code

<sup>67</sup> Beginning from the 2018 social elections.

### ***Actions before administrative courts***

Contesting voting and the legality of voting operations fall under the competence of the director of the Labour and Mines Inspectorate. This person's decision may be appealed before the Administrative Court, which will issue a final ruling as the competent jurisdiction.

### ***Actions before the Labour courts***

Unless determined otherwise, disputes concerning employee delegations other than those cited previously that fall under administrative jurisdictions are in the competence of the Labour Court. Disputes concerning the right of delegations to participate are also excluded from the competence of the Labour Court.

### ***Obstruction offences***

All attempts at intentional obstruction, either to set up an employee delegation, to hinder the free appointment of its members, to impede its regular functioning or to obstruct the appointment of an Equality delegate are punishable by a fine ranging from € 251 to € 15,000.

If offences are repeated, punishment is the double of maximum penalty. A prison term may be meted out ranging from eight days to 3 months.

The same is true for obstructing the appointment of a delegation on the economic and social entity level and the appointment of a Health and Safety delegate, or obstructing the accomplishment of that person's tasks

## 2 JOINT WORKS COUNCILS

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**Note:** The following provisions will all be eliminated after the 2018 elections and the responsibilities of the joint works councils will be transferred to employee delegations, although only for companies with 150 or more employees (see explanation under "Responsibilities of employee delegations" pages 43 to 46).

### 2.1. Implementation

#### 2.1.1. Companies concerned<sup>68</sup>

All industrial, crafts and trades company in the private sector that is established on Luxembourg territory must set up a joint works council if it has employed at least 150 persons over the past 3 years.

The term "habitually" used in legal texts implies that if a company employs over 150 persons on an exceptional basis, while its usual staff numbers do not exceed 150, it is not obligatory to set up a joint works council.

Inversely, a company that employs fewer than 150 persons under exceptional circumstances, with a normal staff of over this figure, is subject to the rule.

It should be noted that companies tied to a foreign company by means of a subsidiary located in Luxembourg, which as such is subject to the provisions of the law dated 10 August 1915 relating to trading companies, must establish a joint works council if the 150 worker threshold is reached.

#### ***How are staff levels determined in companies?***

When calculating personnel numbers, different categories of persons employed within companies are taken into account.

##### ***Persons employed under permanent, full-time contracts***

The first category of staff to be taken into account in determining personnel numbers are those working in companies under permanent, full time contracts, excepting those under apprenticeship contracts.

##### ***Personnel employed under part time contracts***

Part time employees working up to and over 16 hours per week are fully acknowledged in determining staff numbers in companies.

Those working fewer than 16 hours per week are counted by dividing total number of hours registered in their work contracts by the legal or contractual work week.

##### ***Persons under fixed-term contracts and temporary workers***

Employees on fixed-term contracts and temporary workers in companies are accounted for on a pro-rata basis of the time they were present in companies over the previous 12 months.

However, they are not counted if they are working to replace an absent employee or one whose work contract was suspended.

##### ***Temporary work agencies***

Temporary work agencies are legal or physical persons whose business consists in hiring and paying persons under contract with the intent of placing them in companies temporarily to achieve some precise and temporary task, called an "assignment".

In calculating staff employed by temporary work agencies, first all permanent employees of these businesses are counted, then those persons who are linked to it through contractual assignments for a total of at least ten months of the year preceding the date calculations are made.

<sup>68</sup> Art. L.421-1 et seq of the Labour Code



### **Transferred employees**

Employees who have joined a company via the transfer of a business, establishment or part of a company or establishment, are considered part of this company from the date of the beginning of their employment with the initial company.

## 2.1.2. Appointing members of joint works councils

### ***Who may be a member of a joint works council?<sup>69</sup>***

Employee representatives in a joint works council must be aged at least 18 years on the day they are appointed or elected.

They may not have been stripped of their civil, civic or political rights

On the day of the election they must have been employed for at least one year in a company, without interruption. Finally, they must be of Luxembourg nationality, a citizen of a Member State of the European Economic Area or a citizen of another nation outside of this area who holds a valid residency permit<sup>70</sup>.

Employer representatives must meet only the age and civil-civic-political rights criteria.

### ***How are members of joint works councils appointed?<sup>71</sup>***

The law makes a distinction between elected employee representatives and appointed employer representatives.

Employer representatives are designated by company directors.

Employee representatives are elected by employee delegations from amongst the employees in a company.

### ***When should representatives to joint works councils be designated?<sup>72</sup>***

The members of joint works councils should be designated prior to the end of the month following elections of employee representatives in companies.

However, the law stipulates two exceptions to this principle.

For new companies, members of joint works councils must be designated within 3 months.

Likewise, companies must establish a joint works council once employee numbers reach 150 notwithstanding dates of upcoming elections of employee delegations.

### ***How many seats are on joint works councils?<sup>73</sup>***

Joint works councils are made up equally of employer and employee representatives, as follows:

- In companies that habitually employ fewer than 500 persons:  
6 full members and 6 alternates

<sup>69</sup> Art. L.422-4 of the Labour Code

<sup>70</sup> The amended law of 29 August 2008 concerning the free circulation of persons and immigration has effectively replaced the work permit system by a system of permanent residency. We should however note that the Labour Code still refers to the possession of a work permit for those persons native to a country that is not a member state of the European Economic Area Agreement.

Article L.422-4(2) point 2. of the Labour Code stipulates "...be a citizen of a State that is not a member of the European Economic Area Agreement, and holder of a type B or C work permit issued under the legal and regulatory provisions regulating employment of foreign labour. Notwithstanding, citizens of a State that is not a member of the European Economic Area Agreement that are employed under a work permit other than types B or C may be elected if total numbers of such persons does not exceed one third of the members making up an employee delegation. Those elected above that proportion are replaced as appropriate by a person from Luxembourg, from amongst citizens of a Member State of the European Economic Area Agreement or by citizens of a State that is not a member of European Economic Area Agreement and holds a type B or C work permit, who were not elected, but were on the same electoral list and obtained the largest number of votes."

<sup>71</sup> Art. L.422-3 of the Labour Code

<sup>72</sup> Art. L.422-2 of the Labour Code

<sup>73</sup> Art. L.422-1 of the Labour Code

- In companies that habitually employ between 500 and 1,000 persons:  
8 full members and 8 alternates
- In companies that habitually employ between 1,001 and 1,500 persons:  
12 full members and 12 alternates
- In companies that habitually employ between 1,501 and 5,000 persons:  
14 full members and 14 alternates
- In companies that habitually employ over 5,000 persons:  
16 full members and 16 alternates.

***Does the law stipulate conflicts of interest?<sup>74</sup>***

The law stipulates that no person may be both a full or alternate member of a joint works council for two companies in the same line of business or objectives.

## 2.2. Functioning and status of members

### 2.2.1. Functioning<sup>75</sup>

***Who chairs the joint works council?***

The joint works council is chaired by company directors or their delegates.

***What are the joint works council components?***

Joint works councils designate a Secretary from amongst employee representatives who is assisted by an administrative clerk. The clerk is designated by company directors from amongst company staff.

***Who calls the joint works council to sessions?***

The joint works council meets:

- By written summons from company directors or their delegates
- By written request of one quarter of joint works council representatives.

***What is the frequency of joint works council meetings?***

The law stipulates that joint works councils must meet at least one time each quarter. Special meetings may be called on request by one quarter of joint works council members.

***Who sets the agenda for joint works council meetings?***

Agendas are set jointly by company directors or their delegates and council secretaries.

These agendas are sent to members at least five days prior to the joint works council meeting.

Members may request that specific subjects be included in the agenda via a request by one quarter of members 3 days prior to the meeting.

***Where does the joint works council meet?***

The joint works council meets in an area made available by employers. This location must be furnished with all equipment necessary for meetings and to the joint works council's secretary.

***Are joint works council meetings open to the public?***

No, meetings are held in camera during working hours.

<sup>74</sup> Art. L.422-3 of the Labour Code

<sup>75</sup> Art. L.424-1 to Art. L.424- 6 of the Labour Code

### ***How are decisions and opinions adopted in joint works council meetings?***

Joint works council decisions and opinions are adopted by absolute majority of employer and company representative votes.

Opinions are simultaneously sent to the board of directors.

### ***Who decides in case of disagreement regarding a subject falling under its decision making power?<sup>76</sup>***

If faced with two opposing views, the board of directors attempts to find a mutually acceptable solution.

Failing this, disagreements may be brought to arbitration before the National Arbitration Board.<sup>77</sup>

### ***What happens in case of disagreement on a matter under advisory jurisdiction?***

The two representative groups may issue opinions separately that must be communicated to the board of directors or, if necessary, to the company director.

These must inform the joint works council of the outcome of these opinions.

## **2.2.2. Member status<sup>78</sup>**

### ***How long is the term of joint works council members?***

Joint council members are appointed for a period of five years and their term may be renewed.

### ***Under what circumstances are mandates of joint works council members terminated?***

The term of a joint works council representative may be terminated under the following circumstances:

- Death of a member of the joint works council
- Voluntary resignation of term
- Loss of eligibility of a member
- End of the working relationship with a company.

### ***When are alternates called to sit as full members?***

Alternates are called to replace full members as follows:

- In the event of one of the reasons cited above
- In case a full member cannot attend a meeting.

### ***Do joint works council members receive compensation?***

Mandates as representative in a joint works council hold no special compensation benefit. The law stipulates that time spent by employees at joint works council meetings counts as working time in companies.

Likewise, companies bear the cost of travel for members in the performance of their duties.

### ***Is a joint works council member freed from normal duties to carry out duties?***

Yes, employers of joint works council members must facilitate the exercise of this function by granting members waiver from work on an unpaid basis. Employers may not refuse to grant waivers from work unless such waiver impedes the standard functioning of their company.

<sup>76</sup> Art. L.423-1 of the Labour Code

<sup>77</sup> Art. L.164-1 and seq. of the Labour Code for the conciliation/arbitration procedure

<sup>78</sup> Art. L.424-1 to Art. L.424-6 of the Labour Code

***Are members of joint works councils bound by professional secrecy rules?***

Members of joint works councils are bound to keep information of a confidential nature and qualified as such by company directors or their delegates via an entry in the minutes as secret. It is possible to contest an employer's qualification of information as secret before the director of the Labour and Mines Inspectorate.

***What happens if an employer wants to dismiss a member of the joint works council?***

The dismissal of a full or alternate member of the joint works council must be approved by the joint works council.

Such decisions are adopted by absolute majority of employer and company representative votes. In the event of disagreement, dismissal must be approved by the Labour Court.

The above-described principles are also valid for:

- Former joint works council members for six months after the end of their term
- Candidates for terms as members of the joint works council for 3 months beginning from the submission of their candidacy.

***What occurs in the event of serious misconduct by a member of the joint works council?***

If this occurs, employers may immediately suspend the employee and solicit the Labour Court to terminate that person's work contract.

The joint works council member who is the subject of the suspension may solicit the Labour Court President to rule on maintaining or suspending the member's pay pending the final resolution of the dispute.

## 2.3. Member areas of authority

The responsibilities and assignments of joint works council members stem from articles L.423-1 et seq. of the Labour Code.

### 2.3.1. Areas in which joint works council members have decisional authority<sup>79</sup>

**The joint works council has decisional authority in the following areas:**

- The introduction or application of technical installations whose purpose is to check the behaviour or performance of employees at their workstations
- The introduction or modification of health and safety measures of employees as well as the prevention of occupational illness
- The establishment or modification of overall criteria pertaining to personal selection for hiring, promoting, transferring, dismissing and, if appropriate, priority criteria for admitting employees to pre-retirement programmes
- The establishment or modification of overall evaluation criteria for employees
- The establishment or modification of internal rules and procedures
- The granting of awards to employees who, through their initiative or recommendations for technical improvements have proven particularly useful to companies, without prejudice to laws and regulations on patents or inventions
- The implementation of a data processing system for personal information with the purpose of monitoring them in the workplace, where this is justified by one of the following reasons:
  - The requirements of the health and safety of employees

<sup>79</sup> Art. L.423-1 and Art. L.261-1 of the Labour Code

- Temporary verification of the production or services of an employee, where such a measure is the only method for determining exact compensation, or
- Work organisation on a flexible time schedule

The decision-making authority of the joint works councils is without prejudice to the autonomy of the social partners.

### 2.3.2. Monitoring authority of the joint works council<sup>80</sup>

The joint works council monitors the social work instituted by companies for the benefit of their employees, including measures intended to ensure or facilitate getting housing for employees.

This monitoring authority is carried on the basis of a management report put out at least once per year by company directors and has no effect on the authority of employee delegations in this area.

### 2.3.3. Rights to information and consultations

#### ***Regarding infrastructure<sup>81</sup>***

Company directors must inform and consult with joint works councils prior to making any major decision concerning:

- Construction, transformation or extension of production or administration facilities
- Introducing, improving, renewing or converting company plant
- Introducing, improving, renewing or converting work methods and production procedures, except for any that would reveal manufacturing secrets

Employers are also required to inform joint works councils with regard to impacts of planned measures on working conditions and environments.

#### ***Regarding company personnel<sup>82</sup>***

Company directors shall inform and consult with joint works councils at least once yearly with regard to current and foreseeable labour requirements in the company, and especially with regard to professional training, improvement and re-education measures that may stem from these for the company's employees.

#### ***Regarding economic or financial decisions<sup>83</sup>***

Joint works councils must be informed and consulted on every type of economic or financial decision that may have a decisive impact on companies' structure or jobs.

As an example, this includes company capital expenditure policies or decisions relating to productions or sales volumes.

Information and consultation with joint works councils must necessarily pertain to the repercussions of measures under consideration regarding the volume, structure of company personnel and working conditions of company employees. This will furthermore focus on social measures, especially professional training and re-education measures taken or under consideration by company directors.

The information and consultation phase embarked on with the joint works council must always take place prior to decisions under review, unless where this risks impeding the management of companies or a part of companies, or where it may compromise the fulfilment of a planned operation.

In these cases, employers must give joint works councils all necessary information and explanations within 3 days.

<sup>80</sup> Art. L.423-5 of the Labour Code

<sup>81</sup> Art. L.423-2 (1) and (2) of the Labour Code

<sup>82</sup> Art. L.423-2 (3) of the Labour Code

<sup>83</sup> Art. L.423-3 of the Labour Code

***Regarding companies' economic and financial progress*<sup>84</sup>**

Company directors must inform and consult with employee delegations in writing at least twice yearly with regard to economic and financial progress of their companies.

To this end, company directors will submit a report on their companies' entire business to joint works councils that includes sales figures, overall production and operations results, orders, changes in the structure and amounts of employee compensation and capital expenditures programmes completed.

Where companies are organized as joint stock corporations, non-profit associations, cooperatives or foundations, management is furthermore obliged to communicate profit and loss statements, the annual report, statutory auditors' report, the board of directors' or Management report and any other document to be submitted to shareholders' meetings.

***Regarding new part-time jobs created*<sup>85</sup>**

Company directors must consult with the joint works council whenever they are considering creating new part time jobs in their companies or one of their entities.

***The implementation of a data processing system for personal information with the purpose of monitoring in the workplace*<sup>86</sup>**

Where such processing is justified by one of the following reasons:

- The need for protecting companies' assets, or
- Checking the production process, focusing solely on machines

Without prejudice to concerned persons' right to information, prior to acting, employers inform persons concerned, the CNPD and joint works councils, or failing that, employee delegations, or failing that, the Labour and Mines Inspectorate.

***Temporary work and temporary use of labour*<sup>87</sup>**

- Company directors are required to inform and consult with joint works councils, failing which, employee delegations, when they are considering using temporary workers or a temporary loan of labour. Furthermore, employers who use temporary workers are required to submit contracts for such labour concluded with temporary work agencies to joint works councils upon request, or failing this, to competent employee delegations.
- Company directors who are considering making employees available temporarily to other employers in accordance with article L.132-1 of the Labour Code are required to inform and consult with joint works councils or failing this, with employee delegations, prior to doing so.

**2.3.4. Responsibilities of joint works councils in the area of gender equality<sup>88</sup>**

In the exercise of its functions, joint works councils must strictly ensure compliance with standards for equal treatment of men and women in the areas of access to jobs, training and professional advancement, compensation and working conditions.

**2.3.5. Relations between joint works councils and occupational health services**

The following is stipulated in the area of health services in the workplace:

- That internal or external health services in companies must cooperate closely with joint works councils, or failing these, with employee delegations<sup>89</sup>

<sup>84</sup> Art. L.423-4 of the Labour Code

<sup>85</sup> Art. L.123-2 of the Labour Code

<sup>86</sup> Art. L.261-1 of the Labour Code

<sup>87</sup> Art. L.134-1 of the Labour Code

<sup>88</sup> Art. L.423-6 of the Labour Code

<sup>89</sup> Art. L.423-6 of the Labour Code

- That at the beginning of each year, occupational physicians must establish an activity report for the past year<sup>90</sup>. This report must be drafted yearly for companies with at least 150 employees, every 3 years for the rest, and it must be submitted to joint works councils, or failing these, to employee delegations, prior to submitting them to the Health directorate<sup>91</sup>.
- That joint works councils, or failing these, employee delegations, may request medical examinations<sup>92</sup>.

## 3 EMPLOYEE REPRESENTATIVES IN PUBLIC LIMITED COMPANIES

### 3.1. Companies concerned

#### ***Which companies are required to include employee representatives in their board of directors or Supervisory Boards?<sup>93</sup>***

The following companies must include employee representatives in their boards of directors or Supervisory Boards:

- Companies registered in Luxembourg under the form of public limited companies that habitually employ 1,000 persons at the least over the past 3 years
- Companies established in Luxembourg as public limited companies in which the government has at least a 25% stake or in which it has a concession relating to its main business. These companies are designated in a Grand Duchy regulation. According to a Grand Duchy decision dated 11 August 1974, this concerns CEGEDEL, LUXAIR, CLT and SES. This decision was modified in 2008 in order to add the Luxembourg airport management company LUX-AIRPORT to the list.

#### ***What is minimum number of members on boards of directors or Supervisory Boards?<sup>94</sup>***

Directors and members of Supervisory Boards for the companies concerned must total at least 9 in all.

#### ***How is employee representation ensured?<sup>95</sup>***

The law makes a distinction between:

- Public listed companies with at least 1,000 employees. In these, one third of directors or members of supervisory boards must represent employees
- Public listed companies with State stakeholdings or concessions: 3 directors or 3 members of supervisory board are the minimum for representing employees. Boards of directors or supervisory boards shall be comprised of one director representing employees per group of 100 persons, with the total number of directors or members of the supervisory board not exceeding one third of board members or members of the supervisory board.

<sup>90</sup> Art. L.322-2 of the Labour Code

<sup>91</sup> Every year in companies employing at least 150 persons; every 3 years for the rest.

<sup>92</sup> Art. L.325-4 of the Labour Code

<sup>93</sup> Art. L.326-5 of the Labour Code

<sup>94</sup> Art. L.426-1 et seq. of the Labour Code

<sup>95</sup> Art. L.426-2 of the Labour Code

## 3.2. Appointment and term of employee representatives in boards of directors or supervisory boards

### ***How are directors representing employees in boards of directors appointed?*<sup>96</sup>**

Members of boards of directors or supervisory boards that represent employees are designated by employee delegations from amongst company employees. Elections are held by secret ballots according to the rules of proportional representation.

One exception to standard rules for designating members of boards of directors or supervisory boards exists for public listed companies in the steel sector. 3 members of the board of directors or supervisory board that represent employees are designated by the most widely represented trade union organisations on the national level as opposed to by employee delegations.

This appointment is made after consultations with signatories of collective bargaining agreements applicable to companies. Members of boards of directors or supervisory boards appointed in this manner do not necessarily have to be employees of companies.

If appointments are not made within deadlines, members of the board of directors or the supervisory board are appointed by the Minister of Labour from amongst company personnel.

### ***When must employee representatives in boards of directors or supervisory boards be appointed?***

Appointments shall be confirmed no later than the month preceding the end of the terms of previous board of directors or supervisory board members.

### ***What are the requirements to become members of boards of directors or supervisory boards who represent employees?*<sup>97</sup>**

Employees of the company who wish to run for office must have an employment contract that took effect at least two years prior to their appointment as members of the board of directors or Supervisory Board and it must be an actual contract.

It should be noted that appointments as members of boards of directors or of supervisory boards does not negate the benefits of this contract.

### ***What are term lengths?*<sup>98</sup>**

Members of boards of directors or supervisory boards that represent employees are appointed for a term of the same length as other members of boards of directors or supervisory boards. Their term is renewable.

According to the amended law dated 10 August 1915 or trading companies, the maximum length of a term for members of boards of directors or supervisory boards is six years.

### ***Under what circumstances are mandates of members terminated?***

The terms of members of boards of directors or supervisory boards who represent employees terminate under the following circumstances:

- Death of a member of boards of directors or supervisory boards
- Voluntary resignation of term
- End of the working relationship with a company
- Mandate is revoked, either by an employee delegation, by a trade union organisation or by the Minister of Labour

<sup>96</sup> Art. L.426-3 of the Labour Code

<sup>97</sup> Art. L.426-4 and Art. L.426-5 of the Labour Code

<sup>98</sup> Art. L.426-6 of the Labour Code



### ***How are outgoing members replaced?***

When members of boards of directors or supervisory boards cease to hold mandates for one of reasons cited above, they are replaced:

- By the next candidate in sequence on the list, where outgoing members are designated by employee delegations
- By candidates designated by trade union organisations with the widest representation on the national level, failing which, by the Minister of Labour, where outgoing members are employed by a company in the steel sector

It should be noted that when a seat becomes vacant, the other members of boards of directors or supervisory boards are entitled to occupy it temporarily until the first plenary meeting proceeding to a definitive election.

### **3.3. Powers and responsibilities**

These members have the same rights and responsibilities as other members of boards of directors in companies:

- No individual power over the corporate management of the company, as management powers belong solely to the board of directors as a group of decision making members
- No powers of decision or representation
- Individual rights to information
- Individual right to investigation
- Notification of meetings of boards of administration and right to information prior to meetings regarding all issues for discussion, i.e. meeting agendas
- Right to convene the board of directors: If boards of directors or supervisory boards have not met for over 3 months, one third of members may request that it be convened. Such a summons must indicate an agenda for the meeting.

### ***Liability<sup>99</sup>***

Employee board members may be held liable for their acts as employer members of the board, in the same capacity.

In the same way, all directors are liable together, either to the company or to third persons, for damages arising from violations of the law dated 10 August 1915 of trading companies or of the bylaws of the company.

In view of this presumption of unified management by the board, none of its members may be disengaged of their liability unless no charge may be laid against them and members have indicated their disagreement with decisions in plenary meetings or if they reported infractions as rapidly as possible to the nearest full authorities.

### **3.4. Status**

#### ***May a member of a board of directors or supervisory board be fired?***

No, members of boards of directors or supervisory boards that are representatives of employees may not be fired during their terms without express authorisation of the Labour Court.

This also applies for:

- Former members of boards of directors or supervisory boards who represent employees for the six months subsequent to the end of their term

<sup>99</sup> Art. L.426-7 of the Labour Code

- Candidates to the seats of members of boards of directors or supervisory boards for a period of 3 months beginning from submission of their candidacy.

### ***Can members of boards of directors or supervisory boards be dismissed for serious misconduct?***<sup>100</sup>

In the event of serious misconduct by members of boards of directors or supervisory boards while working at jobs inside their companies, company directors may immediately suspend such persons from their duties and solicit the Labour Court to terminate their work contracts.

2018

As from the 2018 social elections, rules will be the same as for employee delegates, except for in the area of rights to retroactive unemployment benefits for delegates whose contracts were terminated by a court and who are ordered to repay employers for salary costs.<sup>101</sup>

### ***Are there conflict of interest situations in the status of members of boards of directors or supervisory boards who represent employees?***

Yes, members of boards of directors or supervisory boards who represent employees may not simultaneously be members of boards of directors or supervisory boards for two or more companies that conduct the same business and seek the same objectives.

Likewise, they may not be employed by another company conducting the same type of business as that of the company in which they are board members.

Furthermore, members of boards of directors or supervisory boards who represent employees may not belong to more than two boards of directors or supervisory boards.

<sup>100</sup> Art.L.426-9 of the Labour Code

<sup>101</sup> Art.3, point 3 of the law dated 23 July 2015











# Labour Law

## Social dialogue in companies

The law dated 23 July 2015 for the reform of social dialogue within companies is imposing a number of major new rules that will govern the social dialogue processes in companies.

Part of the legal modifications will go into effect beginning on 1 January 2016. Others will not take effect until the next social elections in 2018.

This is therefore CSL's opportunity to republish its work on the representational structures for employees in companies operating in the country.

This publication is intended as a guide whose purpose is to provide the fullest range of information possible to both employees and employee representatives, highlighting the new aspects and the date each of them enters into effect.

The publication features a two-tiered structure.

The first level is an overview of the main modifications under the new legislation, which consists of a few pages covering what will change

The second level is a practical guidebook of the provisions taking effect as from 2016, with detailed explanations of the new rules.

- The first item is dedicated to employee delegations.
- The second item deals with joint works councils which still exist until 2018 social elections.
- The third item deals with employee representatives in public limited companies.

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