

When a company has 11 employees or more in France, the employer has the legal obligation to organize a staff representatives' election. The staff representatives are usually elected for a period of four years. Their main mission is to present employees' requests to the employer. The employer has to have at least one meeting per month with the staff representatives. Each staff representative is entitled to 10 hours per month for the duties in relation with his mandate and these hours are considered as working time.



Legal obligation with the crossing of the threshold of 11 employees

A. The obligation only applies when the threshold is crossed for at least 12 months (consecutively or non-consecutively)

Staff representatives' election has to be implemented in all companies with at least 11 employees, when this threshold has been reached for at least 12 months (consecutively or non-consecutively) over the last 3 years.

B. Calculation of the threshold

The headcount is calculated on a month-to-month basis (not on an average basis).

- Employees to be taken into account for the calculation:
 - Employees who have a full-time long-term contract ("CDI") on the last day of the month;
 - Employees who have a part-time long-term contract ("CDD") on the last day of the month, in proportion with their worked hours;
 - Employees who have an intermittent employment contract ("contrat de travail

intermittent"), in proportion with their time of attendance within the company over the last 12 months;

- Employees at the company's disposal who are present on the company's premises and have been working there for at least one year, in proportion to their time of attendance over the last 12 months;
 - Employees who have a fixed-term contract ("CDD"), in proportion to their attendance time over the last 12 months;
 - Interim employees ("intérimaires"), in proportion to their attendance time over the last 12 months.
- Main categories of employees who are excluded from the calculation:
 - Employees with an training/apprenticeship contract ("contrat d'apprentissage" and "contrat de professionnalisation");
 - Employees with a fixed-term contract, temporary workers, or employees at the company's disposal, as long as they are replacing an absent employee.

C. Time limitation to implement the election

Companies that crosses the threshold of 11 employees (for a period of 12 months, consecutively or non-consecutively, over the last 3 years) for the first time, have a maximum period of 90 days - from the date of the threshold crossing - to implement the first round of the election.

D. The employer is only subject to the legal obligation to run an election but not to have staff representatives

The employer is only under the legal obligation to run the staff representatives' election.

Therefore, if there is no candidate for the election, a deficiency statement ("procès-verbal de carence") is drawn up and the employer has fulfilled his duty.

The employer has completed his duty for a period of 4 years, except if an employee requests an election during this period. After this 4 year period, the employer has to run another election - if the threshold of 11 employees remains reached.

Risks in case of failure to comply with the legal obligation

An employer, who does not run a staff election despite the legal obligation encounters the following sanctions:

- Sanction under penal law
 - An employer who does not run a staff representatives' election despite his obligations commits a criminal "interference" ("délit d'entrave"), which can be punished by a year's imprisonment and/or a fine of 3,750 euros.
- Financial sanctions
 - In a case of an economic dismissal, the non-compliant employer will have to pay an indemnity equal to at least one month's salary to the dismissed employee – this indemnity will be added to the other due indemnities.
 - The employer who does not proceed to an election will lose exemptions related to profit sharing scheme ("intéressement").
 - The trade unions and the employees can claim damages.
- Limitations of the employer's powers
 - The employer who has failed to comply with this obligation cannot denounce a company practice.
 - The employer who has failed to comply with this obligation cannot dismiss an employee declared unfit further to a work-related accident or a professional illness. The dismissal is punished by an indemnity which is equal to 12 months of the employee's salary.



Implementation of the election

The employer must send informative letters to trade unions that are recognized as representatives (5 national trade unions and the representative trade unions—for the branch). The list of those representative trade unions is provided by decree.

The employer has to contact the trade unions:

- To ask them to nominate union members who will apply as candidates
- To ask them to submit the candidature of union members
- To negotiate the electoral protocol

Furthermore, the employer has to announce the election on a billboard at the company's premises. The first round of the election has to be run no later than 90 days after this announcement.

If the trade unions come forward, the employer negotiates the pre-electoral agreement protocol with them. It notably defines the number and the composition of electoral colleges and the practical terms and conditions of the election.

If the trade unions do not come forward, then the employer decides the electoral protocol by his own.

The election is organized by electoral colleges (workers and employees on one hand, supervisors and executives on other hand). The election may have 2 rounds.

An electoral office has to be designated. It will ensure the supervision of the ballot.

The first round is restricted to the candidates nominated by the trade unions.

A second round is organized within the 15 days following the first round:

- If there is no candidate nominated by trade unions;
- If the quorum is not reached (it requires the votes of half the registered electors at least);
- Or if all the positions have not been filled.

This second round is opened to every candidate whether nominated by trade unions or not.

Failing the designation of staff representative, a deficiency statement is drawn up.

Your Chartered Accountant is your best consultant.
Don't hesitate to contact us!