

# INTEGRATION ISSUES

## Employee Representatives: Your Guide



Social Elections

# Employee Representatives: Your Guide

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The parliamentary elections are not the only ones to have hit the headlines in Luxembourg this year. The social elections, which include the CSL (Chamber of Salaried Employees) elections and the Délégués du personnel (employee representatives) elections, have also had their share of attention. Not without reason: the two are essential to employees in the Grand Duchy and the way they function have an impact on working life.

The CSL elections were covered in the Q3 “Integration Issues” booklet—and if the spotlight is this time on the employee representatives, it’s because the extent of their role, the obligations companies have towards them and the matters they can help with are often ignored. As CSL President Jean-Claude Reding explained prior to this year’s elections, “Staff delegates play an important supporting role within a company, acting as an interface between the employer and the employees with regard to working conditions, job security, health and social status.”

This booklet aims to answer the most common questions about employee representatives and will hopefully give you the tools needed to understand how they can be of help.

## **What is an employee representative?**

The mission of staff delegation is to protect and defend the interests of employees. Employee representatives can be asked to give opinions and offer proposals regarding any issue related to

the improvement of working conditions, terms and conditions of employment and social rights of the employees (e.g., problems linked to layoffs, modification of pension schemes, issues related to safety, interior rules, harassment, implementation of part-time jobs, apprentice training, etc.). They can present individual or collective complaints to the employer and play a role in preventing and resolving disagreements that may arise between the employer and the employee(s). If the issues cannot be solved in a satisfactory way, staff representatives can take the case to the Inspection du Travail et des Mines (ITM, Inspectorate of Labor and Mines) and get the legal, regulatory, administrative and contractual support needed. In the same way, the ITM can turn to the staff delegation to act as a mediator.

## **Does every company have to appoint employee representatives?**

Yes, every company with more than 15 employees—regardless of the nature of its activities, legal form or the economic sector in which it operates—must appoint one or more staff delegates. Part-time employees, temporary staff and employees with fixed-term contracts are taken into account on a pro rata basis (on the condition that they are not replacing an absent employee). Apprentices are not taken into account. Companies that have difficulties determining how their employees should be counted or that need legal advice and information about elections and staff delegates can ask for support at ITM.



### **Who organizes the elections? And when?**

Elections for employee representatives must be organized by the company every five years. However, the company is allowed to appoint an employee to do the job. And it is quite a job: the rules surrounding the event are plentiful and a strict schedule must be followed as to when different announcements must be made (date of elections, names of candidates, results, etc.) and when various lists sent off (to ITM). The date of the elections is common to all and is decided by the Minister of Labor and Employment. This year, elections took place on November 13. The next ones will take place in the last quarter of 2018.

### **What if my company refuses to hold elections?**

As mentioned, every company with more than 15 employees must appoint a staff delegation and organize the

elections. Your company is, of course, aware of this and there is no way to sidestep this obligation. If you have noticed any resistance, ask the ITM to intervene straight away.

### **Which voting system is used?**

When a company has less than 100 employees, the voting system used is that of a relative majority. Candidates present themselves individually. When a company has more than 100 employees, the proportional representation system is used and candidates appear on lists. These lists are generally presented by different trade unions.

### **How many employee repre- sentatives are elected?**

The number of staff delegates elected depends on the number of employees in the company. For each delegate elected, an alternate is also elected (see Table 1).



**Table 1**

	Number of employees	Number of employee representatives to be elected
Relative majority system	15 - 25	1
	26 - 50	2
	51 - 75	3
	76 - 100	4
Proportional representation system	101 - 200	5
	201 - 300	6
	301 - 400	7
	401 - 500	8
	501 - 600	9
	601 - 700	10
	701 - 800	11
	801 - 900	12
	901 - 1,000	13
	1,001 - 1,100	14
	1,101 - 1,500	15
	1,501 - 1,900	16
	1,901 - 2,300	17
	2,301 - 2,700	18
	2,701 - 3,100	19
	3,101 - 3,500	20
	3,501 - 3,900	21
	3,901 - 4,300	22
	4,301 - 4,700	23
	4,701 - 5,100	24
	5,101 - 5,500	25
	More than 5,500	1 more representative every +500 employees onwards

## Can anyone be a candidate?

Not exactly. Company directors/owners (and their relatives up to the fourth degree) cannot be elected, and neither can the head of the HR department. Otherwise, if you're over 18 years old, have worked in the company uninterrupted for at least a year and are from a country within the EEA Agreement, Luxembourg or not, you can be a candidate.

## Who can vote?

To vote in the staff delegation elections, nationality is not an issue. The only thing required is that you are over 18 years old and have worked in the company uninterrupted for at least six months. Voting in staff delegation elections is not mandatory but participation is usually high.

## Are employee representatives "protected"?

Yes, they are, as they cannot be dismissed. It is forbidden by law for an employer to lay off a staff delegate during his or her mandate, and up till six months after the mandate has ended. The only exception to this rule is if the employee is guilty of serious misconduct. However, the wish to be a protected employee should not be a main motivation for running for staff delegation. Employee representatives have a major responsibility towards all employees in the company.

## Do employee representatives get paid?

Not per se. However, the time they spend on their duties is counted as work time. There are various rules re-

garding how many hours can be spent per month on staff delegation work, and absences for meetings, for example, must be communicated beforehand. Employee representatives are also allowed a leave of absence for training to improve their knowledge in fields necessary to their delegation work. The length of this training depends on the size of the company.

## What information do employee representatives have access to?

Management is under obligation to inform the staff delegation about the economical situation of the company (turnover, orders, investments, etc.). This must happen once a month in companies with over 150 employees or during meetings with management for the others (at least three times per year). Stock companies of any form give a complete report about the company's financial situation and activity at least once a year.

Management must also consult with the employee delegates when there is a change in job structure (e.g., contracts, salaries, working hours), when part-time jobs are created or when temporary employees are being hired. This is also the case for example if new technology is to be introduced or if new work conditions are implemented (so the delegates can prevent potential health and safety risks).

Every semester, complete statistics, classified by gender and including an update on promotions, hiring, job transfers, layoffs, professional training and salaries also have to be handed over.

## What obligations do employee representatives have?

Apart from their main obligation to protect and defend employees, the staff delegation must act upon the information given to them by management and come up with proposals and solutions when needed if, for example, changes taking place within the company do not serve the employees well or if the company asks for help implementing new policies. Employee representatives are subject to a confidentiality obligation, which also means management can ask them not to inform employees of certain confidential matters. However, if they judge that this demand is not justified, staff delegates can request the ITM to rule on the matter. In the same way, employee representatives must preserve confidentiality when presented with information by and about employees.

## When should I get in touch with the staff delegation?

Whenever you have a work-related issue, you can turn to employee representatives for information and support. They can advise you on which action can be taken, as well as act as a negotiator with the employer or assist you in various situations. For example, it is always a good idea to ask for a staff delegate to be present if you are called into the (mandatory) preliminary discussion before dismissal so they can inform you about your rights and ensure that those rights are respected. You can also consult them in situations of harassment or other issues with co-workers before going to the HR department in order to present your case in the best possible way.

## As management, how should I interact with staff delegates?

It is in your full interest to apply the rules and regulations in the best way possible and keep your employees safe and satisfied. Collaboration is the way to go!



### For more information

For any questions relating to staff delegates or issues regarding your rights at your workplace, these are the first two places to go.

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