

# HR PRACTICAL INFORMATION

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## PROFESSIONAL ELECTIONS AND PERSONNEL REPRESENTATIVES

Professional elections are an important moment in the company's life since they make it possible to set up an institution whose primary mission will be to represent employees. When we talk about professional elections in France, it is essential to ensure a good understanding, to consider them as a plural election.

### CONDUCT OF THE PROFESSIONAL ELECTIONS

Voting to professional elections is actually voting:

- To elect the entitled members (*titulaires*) of the *Comité Social et Economique* (CSE)
- To elect the deputies (*suppléants*) of the CSE
- To determine the unions which are “representative” in the institution (which will designate, in turn, their *Délégués Syndicaux*)

The representative unions in the institution are determined during the first round of the *Comité Social et Economique* members' election. It is also essential to keep in mind that the union representatives, through their unions, represent every employee in the institution and not exclusively people from their professional category.

### THE ELECTORAL PROCESS

The election is held by secret ballot.

Employees aged 16 years or over, who have been working for at least 3 months in the company may participate in the election of members of the CSE.

Employees aged 18 or over, who have been working in the company for at least one year are eligible.

Employees working part-time simultaneously in several companies are only eligible in one of these companies. They choose the one in which they apply.

The labor inspector may authorize exceptions from the conditions of eligibility or to be a voter, after consulting the representative unions in the company.

The electoral process is very clearly set down by law. The terms of the elections are set within a pre-electoral agreement, which is negotiated before each new professional election by the employer, and the unions.

The election of personnel representatives is an election by list. Voters cast a ballot for a list of candidates, who are then elected in the order in which they appear on the list. For example, if list A wins the first seat, the first person on list A is elected to that seat, subsequently if list B wins the second seat, the first person on list B is elected to that seat, etc.).

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The pre-electoral agreement determines the number of electoral colleges and their composition i.e. the distribution of employees among the different electoral colleges and the number of seats for each of them. It also determines the number of seats reserved for men and women, which is proportional to the numbers of men and women represented in each college.

Each representative union may present a list for each college. The list is divided between the entitled members (*titulaires*) and the deputies (*suppléants*) for each college.

- Staff (*Non cadres administratifs – employees + technicians and supervisors*)
- Executive staff (*Cadres administratifs*)
- Professors (*Cadres enseignants*)

The lists must alternate male and female candidates.

The length of the mandate is also part of the discussion when negotiating the pre-electoral agreement. This can vary from 2 to 4 years.

### **THE UNION REPRESENTATIVE'S ROLE (*DELEGUE SYNDICAL*)**

The union representative (*Délégué Syndical*) represents the union he belongs to in the institution and gives its position on the issues discussed during the *Comité Social et Economique* meetings. The union gives him mandate “to ensure that employees’ rights are considered and defended as well as the collective and individual moral and material interests of the people mentioned in its status”<sup>1</sup>.

The union representative presents proposals from his union and presents claims or complaints. But his main specificity is based on his capacity to negotiate and sign *Accords d’Entreprise*, at the level of the individual employer, as well as the obligatory yearly negotiations (on salaries, work time and organization, professional equality between men and women, disabled workers work conditions...). The union evaluates the latitude it can give to its representative according to his experience and the nature of their relations. Furthermore, the union representative can be revoked, if the union considers that he has exceeded his mandate.

The union representative is an ex-officio member of the *Comité Social et Economique*. When the *Comité Social et Economique* is consulted on an “*accord d’entreprise*” project or a project to terminate a protected staff representative<sup>2</sup>, the union representative does not take part to the advisory vote

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<sup>1</sup> translated from the article L3121-1 of the Code du Travail

<sup>2</sup> For whom the employer must follow a special procedure if he wishes to terminate any of their contracts.

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unless he has also been elected. Only the elected members in the *Comité Social et Economique* can vote because they are the representatives of their constituents and more widely, of the institution's employees.

### **WHO CAN BE DESIGNATED AS A UNION REPRESENTATIVE?**

The person who is designated as a *Délégué Syndical* must fulfill the following criteria:

1. He or she must be at least 18 years old
2. He or she must have worked for the employer in question for at least one year
3. He or she must not have a criminal record
4. He or she must possess "a certain command" of the French language
5. He or she must not occupy a position in which he exercises the rights of the "employer" (cadres dirigeants and Director of Human Resources)
6. **He or she must have received at least 10% of the valid votes cast during the first round of the professional elections.**

### **HOW CAN A UNION ESTABLISH ITS AUDIENCE?**

Each representative union in the institution can designate a *délégué syndical* among the candidates to professional elections who obtain 10% of the valid votes cast for the *entitled* during the first round of the *Comité Social et Economique* elections.

Representativity is established based on this sole criterion, independently of the requirement that there is a quorum of 50% of eligible voters in order for a list to be elected.

If there are joint lists, which is frequently the case at AUP, then it is up to the unions jointly presenting the list to stipulate, when they present it, the proportion of votes to be assigned to each union. In the absence of instructions, the number of votes will be, by default, equally divided between the two unions appearing on the same list.

When a union does not win 10% of the votes during the first round it will no longer be able to designate a representative (*Délégué syndical*).

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### **WHAT HAPPENS IF NONE OF THE UNIONS GET 10%?**

Mathematically, it is well-nigh impossible that none of the unions represented in the institution gets 10%. This would require that there be at least eleven unions in the institution.

### **WHAT HAPPENS IF A UNION IS NO LONGER “REPRESENTATIVE”?**

If one, or more, of the unions currently represented at AUP receives less than 10% of the votes cast in the first round, that union will no longer be “representative” at AUP, and will no longer be empowered to sign collective bargaining agreements with AUP. The representative of that union will lose his mandate.

### **WHAT HAPPENS IF A UNION REPRESENTATIVE (DELEGUE SYNDICAL) RECEIVES INSUFFICIENT VOTES TO FULFILL HIS MANDATE?**

If the *Délégué Syndical* who holds a mandate - after designation from his union - runs for new elections and receives insufficient votes to continue in this position, he loses his mandate. However, if the union list received sufficient votes to be considered “representative”, the union can designate a new representative from among the candidates who received at least 10% of the votes.

### **THE *COMITE SOCIAL ET ECONOMIQUE* (CSE) IN COMPANIES WITH AT LEAST 50 EMPLOYEES**

Consisting of an elected staff delegation and chaired by the company manager, the *Comité Social et Economique* has a threefold mission:

- Ensure the collective expression of employees so that their interests are taken into account
- Ensure or control the management of social and/or cultural activities
- Contribute to the protection of the health and safety of employees and the improvement of their working conditions

To do this, it has various means at its disposal, such as:

- The possibility to communicate with other employees
- The provision of a room
- The right to economic training
- Time credits
- An operating budget and a budget dedicated to social and cultural activities
- A special protection against dismissal

The obligation to set up a CSE applies:

- To all private sector employers and their employees, regardless of the legal form and activity of the company (commercial companies, civil companies, associations)
- Public establishments of an industrial and commercial nature
- Public administrative establishments employing staff governed by private law

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The staff delegation comprises an equal number of titular and substitute members. The alternate shall attend meetings in the absence of the incumbent.

In companies with less than 300 employees, the union delegate is an ex officio member of the CSE.

The occupational physician and the internal head of the safety department attend meetings of the CSE relating to health, safety and working conditions.

The term of office of the CSE members is set at 4 years. This period may be reduced to 3 or 2 years by collective agreement.

The number of successive mandates is set at 3 unless there is a collective agreement to derogate.

### **Functions of the CSE**

The CSE's responsibilities are defined according to the company's workforce:

The mission of the staff delegation to the CSE is to submit to the employer individual or collective complaints relating to wages, the application of the Labor Code and other legal provisions concerning in particular social protection, as well as agreements and understandings applicable in the company.

It contributes to promoting health, safety and working conditions in the company and carries out investigations into accidents at work or occupational or occupational diseases.

The members of the CSE staff delegation may refer to the labour inspectorate all complaints and observations relating to the application of the legal provisions for which it is responsible.

### **Expression of employees**

The CSE's mission is to ensure the collective expression of employees so that their interests are always taken into account in decisions relating to:

- The management and economic and financial development of the company,
- Work organization,
- Vocational training
- And production techniques

### **General organization of the company**

The CSE is informed and consulted on matters concerning the organization, management and general running of the company, in particular on the following points:

- Measures likely to affect the volume or structure of the workforce

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- Modification of its economic or legal organization
- Conditions of employment, working conditions, including working time, and vocational training
- Introduction of new technologies, any major changes in health and safety conditions or working conditions
- Measures taken to facilitate the placing, return or retention at work of injured workers, war invalids, civilian invalids, persons with degenerative illnesses and disabled workers, in particular on the adaptation of workstations

### **Health and safety**

In the field of health, safety and working conditions, the CSE:

- Carries out an analysis of the occupational risks to which workers, particularly pregnant women, may be exposed,
- In particular, it contributes to facilitating women's access to all jobs, solving problems related to maternity, adaptation and workplace design in order to facilitate the access and maintenance of disabled people to all jobs during their working lives,
- May encourage any initiative it considers useful and propose, in particular, actions to prevent moral harassment, sexual harassment and sexist behavior.

The CSE conducts health, safety and working conditions inspections at regular intervals. It carries out investigations into accidents at work or occupational illnesses.

### **Proposals**

The CSE shall, on its own initiative, formulate and examine, at the request of the employer, any proposal likely to improve:

- The working, employment and vocational training conditions of employees,
- Their living conditions in the company,
- As well as the conditions under which they benefit from additional collective guarantees.

### **Consultation**

The CSE is consulted on the following subjects:

- Strategic orientations of the company
- Economic and financial situation of the company
- Corporate social policy, working conditions and employment
- Implementation of means of controlling employee activity
- Restructuring and downsizing of the workforce
- Collective dismissal for economic reasons
- Takeover bid
- Safeguard, receivership and judicial liquidation proceedings

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### **Right of alert**

The CSE has the right to alert in the following situations:

- Infringement of people's rights, their physical and mental health or individual freedoms in the company
- Serious and imminent danger to public health and the environment
- Knowledge of facts likely to have a deleterious effect on the company's economic situation
- Knowledge of facts likely to characterize an abusive use of fixed-term employment contracts

### **Financing**

The CSE is equipped with:

- An operating budget
- A budget for social and cultural activities (ASC).

The employer provides an operating subsidy to the CSE based on the size of the company.

The operating budget of the CSE is set at:

- 0.20% of the gross salaries in companies with 50 to less than 2,000 employees,

The budget for social and cultural activities is set by company agreement.

The CSE may transfer a portion of the annual surplus from its operating budget to the CSA budget. The transfer to the ASC budget is possible up to a maximum of 10% of this surplus.

### **Meetings**

The number of meetings of the CSE is fixed by collective agreement, but may not be less than 6 per year.

In the absence of agreement, the CSE meets:

- At least once every 2 months in companies with less than 300 employees

The meetings of the CSE bring together the employer or his representative and the members of the staff delegation, or failing that their deputies.

A majority of the members present passes resolutions of the CSE. The deliberations of the CSE are recorded in minutes drawn up by the Secretary of the Committee.

The employer provides the members of the CSE staff delegation with the necessary premises to enable them to carry out their duties and, in particular, to meet.

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### **Commissions**

In companies with less than 300 employees, the setting up of one or more commissions may be decided by company agreement or by agreement between the employer and the CSE.

The labor inspector may impose, if he considers it necessary, the creation of a health, safety and working conditions commission.

### **Hours of delegation granted to CSE members**

Employees who are members of the CSE receive a credit of at least 16 hours per month in companies with more than 50 employees. At AUP, the credit is 22 hours per month.

Time spent in CSE meetings is remunerated as working time. It is not deducted from these hours of delegation.

### **Training**

Employees who are elected to the CSE for the first time benefit from a training period of up to 5 days.

### **Protection**

Members of the staff delegation to the ESC enjoy a protected status.

The protected employee status ensures that the employee's eventual dismissal is not related to his or her duties as a staff representative. This protection is intended in particular to protect the employee from any reprisals by the employer.

Still have questions? Do not hesitate to contact Human Resources.