

Overview of new rules in employees' elected representation

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Introduction

The new majority in Parliament has announced, and in some cases already enacted, many changes. Among them, those dealing with employees' representatives are important, as they reshape a significant part of the Labour Code.

While these changes are not expected to radically alter industrial relations in the workplace immediately, some of the major modifications and their general characteristics are worth highlighting.

Three becomes one

The first major transformation is that the three previous institutions – that is, personnel delegates (in companies with over 11 employees), works councils (in companies with over 50 employees, in addition to personnel delegates) and health and safety committees (in companies with over 50 employees) – will now become single social and economic committees.

A company must elect a social and economic committee if it has 10 or more employees for 12 consecutive months.

While social and economic committees enjoy substantial rights in terms of consultation (as works council used to), their precise powers depend on the number of employees (ie, above or below the 50 employee threshold). Even then, the acquisition of their powers may be subject to an additional 12-month waiting period after the company has reached the 50 employee threshold.

Duration

Social and economic committees will be elected for between two and four years, unless a company agreement provides otherwise.

The real change concerns the number of mandates that one individual can hold consecutively. In the past, no limitation existed, which meant that some employees held representative positions, and the protection attached, throughout their entire career, thereby becoming 'professional' employee representatives.

Now, the maximum number of consecutive mandates is three, unless otherwise provided for by a company agreement. There are also other exceptions for small companies.

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Time allowed for representation purposes

Employee representatives need time off from their professional duties in order to fulfil their representative roles.

While the previous rules provided for only maximum hours, the new regulation provides for minimum ones:

- 10 hours per month in companies with fewer than 50 employees; or
- 16 hours per month in companies with more than 50 employees.

Under the old rules, all representatives enjoyed different allowances, between two and 20 hours per month.

Sub-committees

The reduction in the number of representative bodies will not result in a reduction in social and economic committees' prerogatives, since sub-committees can or must be created in order to address specific issues.

The most important issue is health and safety in the workplace, for which a sub-committee is mandatory in:

- companies with over 300 employees;
- nuclear plants;
- classified plants; and
- any company deemed necessary due to the company's activity, premises and equipment.

Of course, other companies may create a health and safety committee via a company agreement or an agreement with the social and economic committee itself.

The employer or its representative and at least three employees will preside over sub-committees.

Sub-committees' responsibilities must be set out in a company agreement or an agreement with the social and economic committee. Where no agreement is possible, the social and economic committee's rulebook (a compulsory document) will determine these duties.

Sub-committees have no specific rights in terms of expert appointment or court action; they can only suggest these to the social and economic committee.

While other sub-committees may be created by company agreement, they cannot be created via an agreement with the social and economic committee itself.

Experts

Like works councils, social and economic committees may appoint experts in order to assist their members.

The most important cases in which experts may be needed are listed in the Labour Code and include:

- consultation on the company's strategic orientations;
- consultation on the company's economic and financial situation and its social policy, working conditions and employment (in which case the expert is a registered accountant);
- redundancy plans; and
- the occurrence of a "serious, identified and present" risk, whether this is revealed by an occupational accident or disease.

Depending on the nature of the expertise, the cost of an expert will be borne by:

- the employer;
- the employer and the committee; or
- the committee.

In any case, the committee can freely choose the expert.

Should the employer believe that such expertise is irregular, it may want to take the matter to court (especially when it bears the cost of the expert) in order to challenge the expert's findings.

Resources

All social and economic committees will require resources in order to accomplish their goals. To this end, in the first year, they will receive an amount equal to 0.20% of the company's total payroll (0.22% for companies with over 2,000 employees).

These committees must also manage so-called 'social and cultural activities' (eg, managing the company's cafeteria).

The calculation of these amounts was clarified following several high-stakes cases, where important companies (eg, IBM) were required to pay substantial amounts.

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