



Newsflash

2016 social elections milestones

Every four years, social elections take place within a large number of Belgian companies. The next social elections will be held between 9 and 22 May 2016. This newsflash highlights the most important steps in the election process.

Who?

Every company with an average of 50 employees or more in 2015 must organise social elections for the selection of employee representatives in the Committee for Prevention and Protection at Work (CPPW).

Companies with an average of 100 employees or more in 2015 must also organise social elections to select the Works Council (WC) members.

Companies having elected a WC in 2012 and still employing an average of 50 employees or more in 2015 must renew the WC but do not need to organise separate elections to this end. In such companies, elections must only be organised for the installation of a CPPW, the members of which would also undertake the WC's functions.

Key steps in the election process

The election procedure is a lengthy (150 days) and burdensome process. The table below summarises the main steps and corresponding dates (depending on the elections date chosen within the company):

Date	What?	When?
X – 60	Initial information – consultations on TBUs and management functions	11 December 2015 - 24 December 2015
X – 35	Posting of decision on TBUs and management functions	5 January 2016 - 18 January 2016
X – 30	Start of latent protection period for candidates	10 January 2016 - 23 January 2016
X	Posting of election date	9 February 2016 - 22 February 2016
X + 35	Filing of list of candidates by unions	15 March 2016 - 28 March 2016
Y (= X + 90)	Vote	9 May 2016 - 22 May 2016
Y +2	Posting of results	11 May 2016 - 24 May 2016
At the latest on Y + 45	First WC/CPPW meetings	3 June 2016 - 16 June 2016

The most relevant points of attention are outlined below.

1. Communication of key data on X-60

On X-60 (60 days before communicating the social elections date) the employer must communicate the following information, amongst other elements:

- a) the number of workers employed by the employer (known as technical business unit, or TBU), which is essential to determine whether social elections must be held for both the CPPW and WC;
- b) the number of TBUs or legal entities for which bodies have to be established and a description of said entities, which is essential to determine the number of consulting bodies for which social elections must be held and to determine the level at which the average number of personnel must be calculated;
- c) the functions considered as part of management and, for information purposes, the list of employees occupying these functions, which is crucial as these persons cannot be elected as employee representatives.

Between X-60 and X-35, employee representatives (if any were already in place) can discuss the above information, but ultimately, the employer will have to make a final decision on X-35. The trade unions have 7 days (until X-28) to go to court if they disagree with the employer's decision.

2. Start of latent protection against dismissal on X-30

On X+35, the trade unions must submit their candidates' list. Workers whose name appear on these lists are in principle protected against dismissal. Although the employer will only

know on X+35 (i.e. between 15 and 28 March 2016) who is protected against dismissal, their protection retroactively starts on X-30. For this reason, this period is called the “latent” protection period. Depending on the date chosen for the elections, the latent protection period will start between 10 and 23 January 2016 (X-30) and will run until between 15 and 28 March 2016 (X+35).

It is clear that employers should avoid proceeding with any dismissals during this period, regardless of the underlying reasons. Any employee dismissed during this period retains the possibility to put his/her name forward as a candidate and hence benefit from retroactive protection. Ideally, planned dismissals should thus occur before the outset of the latent protection period, or after its expiry (with the risk that an employee whose dismissal was planned may meanwhile be a candidate and as such be protected against dismissal).

3. Possibility to oppose a candidacy

Employers can oppose unlawful candidacies if, for example, the employee does not meet eligibility conditions or in the event of rights abuse. Rights abuse would occur if, for example, an employee submits his/her candidacy after being dismissed, but doing so during the latent protection period for the sole purpose of avoiding or complicating his/her dismissal. In order to successfully bar such a candidacy, the employer should demonstrate that the employee would not have filed his/her candidacy if he/she would not have been dismissed.

Such opposition must occur through court proceedings initiated by the employer.

4. Post-elections: time for composition and internal functioning rules

Between 9 and 22 May 2016 (Y) the social elections will take place. Based on the results, the electoral college will allocate the mandates and identify the employee representatives and their deputies within the CPPW and WC.

Between Y and Y+45, a first meeting of the CPPW and WC must be held in order to designate the chairman and secretary. Before starting their corresponding tasks, the CPPW and WC must draw up their internal functioning rules. These rules should contain information such as meeting locations and dates, members' names, the procedure to amend the rules, etc.

In the course of April 2016, Laga's Employment, pensions and benefits team will organise breakfast seminars on employers' post social elections obligations..

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