

Law of 4 April 2019 Aims to Simplify Organisation of Social Elections

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A new law of 4 April 2019 aims to regulate and simplify the organisation of the 2020 social elections (the “Law”). It was published in the Belgian Official Journal of 30 April 2019 (Wet van 4 april 2019 tot wijziging van de wet van 4 december 2007 betreffende de sociale verkiezingen, van de wet van 20 september 1948 houdende organisatie van het bedrijfsleven en van de wet van 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk/ Loi du 4 avril 2019 modifiant la loi du 4 décembre 2007 relative aux élections sociales, la loi du 20 septembre 1948 portant organisation de l’économie et la loi du 4 août 1996 relative au bien-être des travailleurs lors de l’exécution de leur travail).

The Law contains the following noteworthy features:

- **Threshold for organising elections:** The threshold of employees required for the establishment of a works council remains at 100, despite previous recommendations from the social stakeholders to lower this threshold to 50 employees. The threshold of 50 employees still applies to the establishment of a Committee for Prevention and Protection at Work (the “CPPW”).
- **Reference period:** The Law amends the reference period for calculating the average number of employees. For the 2020 elections, this period started on 1 October 2018 and will end on 30 September 2019. The usual average employment can therefore still be viewed over four quarters, but this period is brought forward by one quarter. In this way, every employer knows by 1 October 2019, at the latest, whether or not it must start the election procedure in December 2019.
- **Election date (day Y):** The social elections must be held between 11 and 24 May 2020. It is recommended to verify well in advance which day will be most suitable for both employer and employees.
- **Voting rights of temporary employees:** Temporary employees who are employed via a temporary staffing agency are granted the same voting rights as permanent employees, provided that they satisfy the following cumulative conditions:
 - Between 1 August 2019 and day X (which normally falls in February 2020): they must be employed for either three continuous months or 65 working days if interrupted; and
 - Between day X and day X+77: they must be employed for at least 26 working days.
- However, such employees cannot be appointed as employee representative candidates.
- **Special personnel register no longer required:** Employers should normally keep a special personnel register which includes the average employment of temporary employees. From now on, the employer may be exempted from keeping such a register, provided that the

works council unanimously declares in formal minutes that the employer employs more than 100 employees on average, during the reference period. For the social elections of 2020, a meeting with the works council should take place in this respect at the latest by 30 May 2019 (i.e., within 30 days following the date of publication of the Law). Employers who wish to rely on this administrative simplification should therefore put this point on the agenda of the upcoming meeting of the works council and formally enact the employee representatives' statement in the formal minutes of the works council.

- Electronic information: The list of information that can be made available by electronic means instead of being displayed on the employer's premises has been substantially expanded.
- Voter lists: Considering privacy legislation, the employer who wishes to make electoral lists available electronically, should do this on a closed platform or on a secured intranet page that is only accessible to the employees. Sending electoral lists by e-mail will not be acceptable.
- Candidate lists: Trade unions must ensure that female and male candidates are proportionally represented in relation to their respective interests within the organisation. Statistics should also be drawn up for this purpose and should be shared with the works council (or, in the absence thereof, with the trade union delegation) within six months of the announcement of the election results.

In addition, for the sake of transparency and to take into account the latest changes, the employer must now in each case proceed to a third display of the candidate lists at the latest on day X+77, regardless of whether or not replacements have been notified to him. In this way, all parties concerned are clearly informed about the final lists of candidates.

Electronic voting: The decision to proceed with electronic voting should no longer be taken unanimously by the works council, the CPPW or the trade union delegation. A simple majority is now sufficient.

Moreover, electronic voting can now also be organised from the regular workstation, as soon as the necessary terms will have been implemented (e.g., to ensure the secrecy of the vote).

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