

# France

## Introduction

French Labor Law recognises two major types of employee representation within the company. The first type, and the older one, consists of employees appointed and controlled by trade unions, whereas the second one consists of elected members and is more diversified, with a major place for the Works Council when a company employs 50 persons or more.

Any action from the employer that is likely to hinder the employee representatives' functions, or failure from the employer to organise professional elections when so required, is a criminal offence that may be punished for the company's legal representative by a maximum fine of EUR 3,750 and/or a maximum of one year of imprisonment. The legal entity could also be punished by a maximum fine of EUR 18,750.

## Trade Unions

### The General Role Of Trade Unions

The exclusive purpose of a trade union is to protect the professional interests of its members (Article L. 2131-1 of the French Labor Code). A trade union is represented, within companies, by a union cell ("*section syndicale*"), and by one or several trade union delegates ("*délégués syndicaux*").

To perform their duties, trade unions may use political pressure, propaganda, and, in some cases, the constitutional right to strike, which can be, under certain conditions, a powerful legal recourse for employees.

Trade unions may gather in national or local associations or federations. The federations determine the policy applicable to all its members, and trade unions do the same for their union cell within companies.

### The Constitution Of A Trade Union

The only formality necessary to constitute a trade union is to draft statutes of the trade union and to register such statutes with the city hall where the trade union is located.

In order for a trade union to be able to create a union cell within a company, it first has to be considered as a representative union (Article L. 2142-1 of the French Labor Code).

Before the law dated August 20, 2008, five major trade unions in France were automatically considered as representative: the CGT, the CFDT, the CGT-FO, the CFTC, and the CFE-CGC (the latter being considered as representative only for executive employees, also known as “*cadres*”). All other trade unions had to prove their representativeness within the company on the basis of several criteria. Aside from a criterion relating to the patriotic attitude of the trade union during the occupation (WWII), the other criteria that may be used for such proof are quantitative (e.g., importance of the membership and of the contributions received by the trade union concerned) and qualitative (e.g., independence of the trade union concerned vis-à-vis the company’s management and the political power, experience, and seniority of the trade union, etc.).

Since a new law dated August 20, 2008, all the trade unions (both at the company and at the branch and at the national levels) have to demonstrate their representativeness by complying with new criteria (Article L. 2121-1 of the French Labor Code):

- Respect of republican values;
- Independence;
- Financial transparency;
- Minimum seniority of two years in the professional or geographical scope concerned;
- Minimum percentage of votes at the last professional elections (10% at the company’s level, 8% at the branch and national levels);
- Influence, which is mainly characterized by the activity and the experience; and
- Importance of the membership and of the contributions received.

However, until the results of the first professional elections within the company, the five trade-unions mentioned above (CGT, CFDT, CGT-FO, CFTC, and CFE-CGC) will continue to be considered as representative, as well as the trade unions which were considered as representative under the previous criteria.

Each representative trade union may only create one union cell within the same company (or establishment). The creation of a union cell may result from the mere appointment of a trade union delegate within that company (or establishment) by the trade union.

## **The Scope Of Trade Union Rights In Businesses**

A union cell within a company or establishment benefits from various rights (some of which are subject, prior to their implementation, to the conclusion of an in-house collective agreement with the employer), in order to efficiently defend employees' rights. In particular, the union cell is entitled to:

- Collect, on the company's premises, the financial contributions made by the employees to the union;
- Distribute its publications and leaflets on the company's premises at the beginning or end of working hours;
- Organise a meeting with its members once a month, after working time;
- Organise meetings in order to invite external personalities, either trade unionists or non unionists (in the latter case, the agreement of the employer is required); and
- Regardless of the trade union delegates' rights, every union cell may benefit, where there are more than 500 employees, up to 10 hours a year dedicated to the negotiation of in-house collective agreements within the company (increased to 15 hours a year when there are more than 1,000 employees).

Additionally, the employer must provide a specific notice board for trade union communications and, when the company employs more than 200 employees, the employer must provide a furnished location specifically designated for the union cells. There must be individual premises for each union cell when the company employs more than 1,000 employees.

## **The Function Of Trade Union Representatives**

### **Trade Union Delegates**

A trade union can appoint an employee (member or not of the trade union) as its trade union delegate. Only trade unions having constituted a union cell may appoint

delegates, and the company must employ at least 50 employees (however, the first condition is a bit artificial given that French case law considers that the mere appointment of a trade union delegate is sufficient in itself to create a union cell). Where the company employs fewer than 50 employees, it is still possible for a trade union to appoint either an employee delegate as trade union delegate or to negotiate and enter into an in-house collective agreement providing for the appointment of a trade union delegate.

In order to be appointed as trade union delegate, an employee must be at least 18 years old, must be employed by the company for, in principle, at least one year, and must be in full possession of his or her civic rights.

The trade union must notify the employer of the appointment, by registered letter with return receipt requested or hand-delivered letter against a signed release. A copy of the letter must also be sent by the trade union to the Labor Inspector, and the appointment must be posted on the trade union notice boards.

The employer cannot interfere in the designation of a trade union delegate, but may challenge it before the First Degree Civil Court (“*Tribunal d’Instance*”), within a maximum period of 15 days following the date of reception of the appointment letter sent by the trade union. The appointment will be cancelled by the Court if it does not comply with the above legal requirements or if it is deemed fraudulent (e.g., only made in order for the appointed employee to benefit from the specific protection granted to trade union delegates).

The number of delegates a trade union can appoint within the same company is based on the number of company’s employees:

<b>Number Of Employees</b>	<b>Delegates Per Union</b>
From 50 To 999	1
From 1,000 To 1,999	2
From 2,000 To 3,999	3
From 4,000 To 9,999	4
From 10,000 Or More	5

The trade union delegate represents its trade union vis-à-vis the employer, and may present claims to the employer in view of improving the employees' working conditions (e.g., salary increases, additional days of vacation, time-off, etc.).

To perform their duties, trade union delegates are authorised to circulate freely within the company's premises. They also benefit from paid time-off to perform their mission as employee representatives (10 hours per month in companies employing from 50 to 150 employees, 15 hours in companies employing from 151 to 500 employees, and 20 hours in companies employing more than 500 employees), which are granted in addition to the union cell's time-off hours and which can be exceeded in exceptional circumstances (such as a strike).

The most important prerogative of trade union delegates is the monopoly they have in negotiating and concluding in-house collective agreements with the employer. In principle, an in-house collective agreement cannot be validly concluded without being signed by a trade union delegate (Article L. 2232-16 of the French Labor Code), even where the majority of the company's employees is favourable to such an agreement.

Trade unions may also have representatives attending Works Council's meetings.

## **Works Councils**

### **General Requirements And Principles**

Any company employing at least 50 employees is required to organise Works Council's elections (Article L. 2321-1 of the French Labor Code). The company is considered as employing 50 employees (or more) when this minimum number has been reached for 12 months, whether consecutive or not, over the last three years.

The employer must initiate the organisation of the Works Council's elections by inviting every representative trade union to present a list of candidates. When the initiative comes from an employee or a trade union, the employer must start the organisation of elections within one month. The employer and the trade unions must negotiate a pre-electoral in-house collective agreement ("*accord préélectoral*") in order to determine the modalities for the organisation of the elections. In the absence of trade unions, or where no pre-electoral agreement is concluded, the employer must organise the elections in compliance with the mandatory conditions set forth by the law.

## **Election Of Works Councils**

Trade unions have a monopoly of candidature for the first ballot of the elections. In the event there are no trade union candidates, or if less than 50% of the electors vote, a second ballot must be organised no more than 15 days later. For this second ballot the candidatures are free, which means that any employee (not only trade union candidates) fulfilling the eligibility conditions can be a candidate.

The employer must also organise mid-term elections if the number of vacancies among the Works Council's members exceeds half of the number of representatives, or if one of the employee categories is no longer represented.

Voters must be at least 16 years-old and must be employed by the company for at least three months. A company's representative, or close relatives, have in principle no voting rights, even if they are employed by the company.

To be eligible as a Works Council's candidate, an employee must be at least 18 years-old and must be employed by the company for at least one year. A company's representatives or close relatives cannot in principle be candidates, even if they are employed by the company.

Works Council's members ("*titulaires*") and deputies ("*suppléants*") must be elected separately, with separate lists for the different categories of employees. The Works Council's seats are then distributed among the relevant categories of employees, as specified in the pre-electoral in-house collective agreement.

The elections are organised during working time and on the company's premises. The employer must provide ballot boxes and polling booths in order to ensure the secrecy of the votes. The vote is based on a system of proportional representation.

The term of office for Works Council's members is four years. A collective bargaining agreement or an in-house collective agreement may provide for a different length, between two and four years.

## **Works Council's Members**

Article L. 2324-1 of the French Labor Code specifies the Works Council's composition.

The employer has the right to appoint one representative to the Works Council, who will also serve as the Works Council's chairman. The corporate representative of the company may, in this respect, be represented by either another corporate officer of the company or by an executive employee.

Most of the other Works Council's members are elected employees. The number of seats available for elected employees depends upon the total number of employees employed by the company:

<b>Number Of Employees</b>	<b>Members</b>	<b>Deputies</b>
From 50 To 74	3	3
From 75 To 99	4	4
From 100 To 399	5	5
From 400 To 749	6	6
From 750 To 999	7	7
From 1,000 To 1,999	8	8
From 2,000 To 2,999	9	9
From 3,000 To 3,999	10	10
From 4,000 To 4,999	11	11
From 5,000 To 7,499	12	12
From 7,500 To 9,999	13	13
From 10,000 Or More	15	15

In addition to the employer representative and the elected employees, the Works Council also has designated members, who are trade union representatives. Each representative trade union may designate an employee to be its representative to the Works Council.

All Works Council's members who are entitled to vote (i.e., the president and the elected members, but not the deputies and not the trade union representatives) may vote for a secretary to do the administrative work (such as drafting the minutes of the Works Council's meetings) and to represent them. The secretary has no special right and must be specifically empowered by the Works Council for each assignment. Any other Works Council's member may also be duly empowered for a specific mission.

## **Management Of Works Councils**

Works Council's meetings must be held once every two months when the company employs no more than 150 employees, and at least once a month when the company employs 150 employees or more. The agenda of the meeting is prepared jointly by the employer and the Works Council's secretary and must be sent to the Works Council's members, along with a convocation letter, at least three days before the meeting (from a practical standpoint, a one-week notice is generally recommended).

External persons may attend Works Council's meetings when required (e.g., Labor doctor, auditor, etc.) and if agreed by the Works Council's members. The employer is entitled to be assisted by two persons during the meetings (in principle belonging to the company's personnel).

Each Works Council's member may give a personal opinion during the meeting, but only the president and the elected members (apart from the deputies) may vote on decisions. Thus, a distinction is made between the members having a deliberating voice (employer representative and elected members) and the members who have a consultative voice only (designated members and deputies).

A secret ballot is imposed only where the Works Council must vote on the dismissal of a protected employee or the hiring/dismissal of the Labor doctor.

Works Council's decisions are made by a majority of attending members. Time spent in a Works Council's meeting is paid like working time and is not deducted from the time-off given to each Works Council member for his or her employee representative's functions. At the end of a Works Council's meeting, minutes of the meeting are drafted by the Works Council's secretary.

The Works Council may create commissions in different fields of its competence. Commissions may also be compulsory. For example, when there are more than 200 employees, there must be a professional training commission and a commission on equal rights between men and women; when there are more than 300 employees, there must be an information and assistance commission for housing; and when there are more than 1,000 employees, an economic commission must be created.

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## Functions And Rights Of Works Councils

The primary function of a Works Council is to ensure the collective expression of the employees and to protect their interests professionally, economically, socially, and culturally.

### Works Council Rights

To protect employees professionally and economically, Works Councils have specific rights regarding information, consultation, and alerts.

#### *Information*

An employer is required to provide regular information to the Works Council, the most important of which include:

- An economic and financial report on the company (one month after the Works Council's election);
- The annual general report (once a year);
- The annual report on the evolution of salaries (once a year);
- Documents transmitted to the annual general meeting of the company (before their transmission);
- Accounting and financial documents of projected management (at the same time as for the shareholders);
- Information on improvements, changes, or transformation of the equipment (every three months and orally);
- General evolution of the financial status of the company (every three months and orally);
- An analysis of the employment situation (every three months);
- Take-over bids (when it occurs);
- An annual report on part time work (once a year); and,
- Any modifications to the internal regulations (when they happen).

### *Consultation*

Prior to making some decisions, an employer must consult the Works Council for its opinion (in particular according to Article L. 2323-6 of the French Labor Code), such as decisions relating to:

- The organisation, management, and general operation of the company;
- Staff and dismissals;
- A modification in the economic or legal organisation of the company; and,
- Technological developments and evolutions, employment, hygiene and safety, working conditions, duration of work, handicap, fixed-term contracts, equal rights between men and women, internal regulations, profit-sharing, and professional training.

Pursuant to case law, a Works Council must also be consulted before or at the same time an in-house collective agreement is to be concluded.

In order to be able to provide an opinion, the Works Council needs to be properly informed, with all appropriate documentation, and it must be provided with sufficient time to examine the situation. Generally, the Works Council will give its opinion by means of a vote during a second meeting.

Under French Labor law, Works Council's consultation means that the employer must seek the Works Council's opinion. An opinion is necessary, but is not binding upon the employer's decision.

However, under rare circumstances, the employer's decision must be driven by the Works Council's opinion, such as in case of:

- Nomination and/or dismissal of the Labor doctor;
- Repartition of the working time over four days per week;
- Institution of time-off to compensate overtime;
- Determination of the number of hygiene and safety committees in companies having several establishments of 500 employees or more, and designation of employee representatives to the hygiene and safety committee; and,
- Refusal to give an authorisation of absence to an employee for participating in professional training.

### *Alert Right*

When the Works Council is concerned, with justification, over the economic situation of the company, it may ask for some explanations from the employer. If the answer is insufficient or confirms its concerns, the Works Council (or its economic commission) may draft a report, which is then transmitted to the statutory auditor. In drafting its report, the Works Council may solicit the help of a chartered accountant paid by the company.

If the Work Council's report confirms its concern, the Works Council may communicate this report to the board of directors. The board of directors will then have to give a substantiated answer within one month.

### *Social And Cultural Rights*

Social and cultural activities must be organised in the interest of the employees or their family, without discrimination, and their purpose is to improve the working and social conditions within the company. The Works Council manages directly, participates, or supervises the management of these activities.

### **Distinctive Rights**

A distinction must be made among the rights of Works Council's members, the right for the Works Council to appoint an expert, and the Works Council's finances.

### *Members*

Works Council's members are entitled to 20 hours per month of paid time-off to perform their duties. They are also entitled to circulate freely on the company's premises and to be provided with some office space to hold meetings. Unless otherwise agreed with the Works Council, this office space must be used exclusively by the Works Council and should include the usual office equipment and facilities.

### *Experts*

A Works Council may be assisted by experts. Thus, a chartered accountant may be appointed for examining the annual accounting report (in case of economic dismissals), for examining the provisional management documents, and for drafting a report for the Works Council when it exercises its alert right.

The Works Council's chartered accountant is entitled to be provided with the same documents as the company's statutory auditor, is granted free access to the company's premises, and is paid by the company.

Provided the company employs at least 300 persons, the Works Council may also decide to appoint an expert in new technologies, remunerated by the company, in situations where the employer contemplates the introduction of new technologies within the company.

The Works Council may also decide to appoint an expert for preparing its works. In such case, the expert will only benefit from access to the same documents as the Works Council and will be paid by the Works Council.

Works Council's members and experts are equally bound by a confidentiality obligation.

#### *Financial Means*

The Works Council is paid two legal subventions by the company each year:

- A functioning subvention representing a minimum amount of 0.2% of the company's payroll (an in-house collective agreement may provide for a higher amount); and
- A subvention for financing social and cultural activities expenses, which cannot be less than the highest amount paid by the company for the same purposes during any of the last three years.

### **Agreements Between The Works Council And Management**

Agreements between a Works Council and the company's management are deprived from the legal force and binding effect attached to in-house collective agreements. They only create obligations for the employer as a unilateral undertaking.

Such agreements have the same legal nature as custom and usage, and they may, therefore, be denounced by the employer, provided that the employer observes a reasonable notice period after having informed the employee representatives and each of the employees concerned in writing.

As an exception to this rule, an agreement entered into between a Works Council and management can be considered as a valid in-house collective agreement if the conclusion of such type of agreement is expressly authorised by the applicable

collective bargaining agreement and if the company concerned does not have trade union delegates. As of December 31, 2009, such agreements could be entered into even if not authorized by the applicable collective bargaining agreement, subject however to specific conditions (in particular, this possibility will only concern the measures which cannot be implemented in the absence of in-house collective agreement).

Moreover, collective agreements can be entered into between a Works Council and management where a specific provision of the law so provides, for example for setting up either a mandatory profit-sharing scheme ("*participation*") or an optional profit-sharing scheme ("*intéressement*").

## **The Interaction Between A Works Council And A Trade Union**

When trade unions are present within a company, their members are quite often also members of the Works Council, because of trade unions' monopoly to present candidates at the first ballot of the professional elections. In such case, both institutions are represented by the same people.

The situation is different when there is no (or minor) trade union presence within the company, which happens rather frequently. In such a case, the Works Council may be much more representative of the employees than trade unions. Even so, trade unions still have a monopoly to negotiate and conclude in-house agreements, which may result in situations where an in-house collective agreement is negotiated by trade unions representing a minority of the company's employees (which may explain why there are so many "atypical" collective agreements between management and Works Councils, even though they do not have the same value as an actual in-house collective agreement).

## **Trade Union And Works Council Employee Protection Rights**

All employee representatives (whether "members" or "deputies" to the Works Council, trade union delegates, etc.) benefit from a very protective status. In particular, the employer may only terminate their employment contract after having first consulted with the Works Council (only applicable for elected employee representatives, such as Works Council's members) and subject to the prior written authorisation by the Labor Inspector (applicable to all employee representatives).

Regarding the Works Council, this protection is applicable to employees having initiated the elections (for six months), candidates or likely candidates (for six months), elected employees (during their term of office), former elected employees (for six months following their term), and employees designated by trade unions (from the reception by the employer of the letter of designation until six months after the end of their term of office).

Regarding trade unions delegates, the protection starts from the reception of the designation letter up until 12 months after the end of their term of office.

The specific protection applies not only in cases of dismissals, but is also effective for any modification of the employment contract or the employee's working conditions.

During the meeting when the Works Council is consulted, the protected employee must be heard by the Works Council's members.

The Labor Inspector is, in general, extremely reluctant to authorise an employer to dismiss a protected employee or modify a protected employee's employment contract. In the most favourable cases for the employer, the Labor Inspector will only authorise such actions after a minimum period of 15 days during which a preliminary inquiry will be held in order to verify compliance with the specific procedure and the absence of discrimination. The Labor Inspector's decision must be motivated, but a refusal of authorisation could be justified by general interest considerations. The employer may challenge a refusal decision before the Labor Minister or by filing a claim before the Administrative Court.

## **Other Types Of Employee Representation**

### **Employee Delegates**

Where a company employs 11 persons or more, the employer is required to initiate employee delegates' elections (Article L. 2312-1 of the French Labor Code). The election takes place the same day as the Works Council's elections (when there is one).

The number of employee delegates is calculated on the basis of the number of company's employees, as follows:

<b>Number Of Employees</b>	<b>Members</b>	<b>Deputies</b>
From 11 To 25	1	1
From 26 To 74	2	2
From 75 To 99	3	3
From 100 To 124	4	4
From 125 To 174	5	5
From 175 To 249	6	6
From 250 To 499	7	7
From 500 To 74	8	8
From 750 To 999	9	9
One more employee delegate every 250 more employees.		

Employee delegates are elected every four years (unless differently provided for in a collective bargaining agreement or an in-house collective agreement), according to the same rules as for the Works Council, and their term of office is four years.

Where fewer than 25 persons are employed by the company, all employees are gathered in a unique voting college (and are not divided in separate categories as for the Works Council's election).

Employee delegates' duties are to:

- Assist the employees in submitting their grievances to the employer;
- Control the proper application of the provisions of the Labor Code; and,
- Perform the duties of the Hygiene and Safety Committee ("CHSCT") and the Works Council, in the absence of such institutions in companies employing 50 employees or more. In such case, the employee delegates are entitled to 20 additional hours per month (for Works Council's duties) and a number of hours equivalent to that allowed to the CHSCT's members.

Employee delegates are allowed to circulate freely within the company. They also benefit from 10 hours of time-off per month to perform their duties where the company employs fewer than 50 persons (15 hours where the company employs 50 persons or more).

A meeting with the employee delegates must be organised each month by the employer.

### **The Sole Body Of Employee Representatives**

In companies employing more than 49 but fewer than 200 employees, the employer may choose to set up a sole body of employee representatives (“*délégation unique du personnel*”), whose duties and rights are those of the employee delegates on the one hand and those of the Works Council on the other hand. The representatives thus appointed are elected according to the rules applicable to employee delegates and are entitled to 20 hours per month to perform their duties. The number of employee representatives is the same as the employee delegates.

### **The Group Committee**

A Group Committee must be created within each group composed of a parent company having its registered office in France, its subsidiaries, and all affiliated entities (Article L. 2331-1 of the French Labor Code). However, this is subject to the condition that the parent company directly or indirectly controls the subsidiary/affiliates. Companies having their parent company located in France and which are controlled by such parent company (10% of their capital shares at least) may be included in the group where the permanence and the importance of the relationship between the two companies demonstrates that they belong to a same economic group.

The Group Committee is not a substitute for the Works Council or the European Works Council. Its purpose is to provide the representatives of each company with more comprehensive information concerning the activity of the group as a whole.

The Group Committee meets at least once a year and must be informed on matters such as the group’s businesses, its financial situation, the employment evolution and employment forecasts on an annual or several years’ basis, possible prevention actions, and the economic prospective of the group for the year to come.

The Group Committee includes employer and employee representatives. The employer is represented by the head of the parent company, which is assisted by two other persons of its choice.

Employee representatives (maximum 30, with no more than two representatives from each Works Council) are appointed by the trade unions among the members of the various Works Councils.

### **The European Works Council (“EWC”)**

The EWC Directive was transposed into French Labor Code (Article L. 2341-1 and followings) on November 12, 1996.

### **The Hygiene and Safety Committee (“CHSCT”)**

In each company employing 50 employees or more, the employer must create a CHSCT (Article L. 4611-1 of the French Labor Code). The purpose of this committee is to contribute to the protection of the employees’ health and security and to the improvement of working conditions. The committee must be consulted in all cases of major changes regarding hygiene, safety, and working conditions within the company.

The CHSCT members benefit from paid time-off to perform their duties (time spent in meeting with the employer is not deducted from such time-off). The number of hours of time-off is based on the number of company’s employees, as follows:

<b>Number Of Employees</b>	<b>Delegates Per Union</b>
From 50 To 999	2
From 100 To 299	5
From 300 To 499	10
From 500 To 1.499	15
1,500 Or More	20