

Strelia's Social Elections Series

September 2023 Edition

The reference period for the calculation of the employment thresholds has come to an end: time to calculate if your organization should organize social elections in 2024!

As indicated in our previous edition of our Social Elections Series, employers exceeding certain employment thresholds must organize social elections for the works council (WC) and/or the committee for prevention and protection at work (CPPW) in 2024. Meanwhile, the reference period for calculating these employment thresholds has come to an end. It is therefore time for employers to get out their calculators!

Below, we will clarify exactly how to proceed with this calculation:

1. What thresholds apply?

In 2024, employers will be required to organize social elections if the following employment thresholds are exceeded within their organizations:

- Employers who usually employ at least 50 employees on average must organize social elections for the CPPW; and,
- Employers who usually employ at least 100 employees on average must also organize social elections for the works council.

To verify if those employment thresholds are exceeded, the usual average employment situation within the company must be assessed. This means that the number of employees should not be determined at one well-defined point in time, but should be calculated on average over a specific reference period.

2. When did the reference period run?

The reference period to determine the usual average employment in a company in view of the 2024 social elections is different for regular employees and temporary agency workers:

- For regular employees, this reference period began to run on 1 October 2022 and ended on 30 September 2023;
- For temporary agency workers, the reference period ran from 1 April 2023 to 30 June 2023.

Important to note is that if during this reference period there has been a restructuring including a transfer of undertaking, the reference period is reduced and the usual average employment should only be calculated over the part of the reference period that was situated after this restructuring.

3. How is the average employment calculated?

(i) Regular employees

For regular employees, the calculation of the average employment is made by dividing by 365 the number of calendar days between each entry and exit declaration made in the DIMONA system during the reference period.

For part-time employees whose work schedule represents less than 75% of a full-time schedule, the number of calendar days for which a DIMONA declaration was made is divided by two. Part-time employees working more than 75% are thus counted as full-time.

Example:

During the reference period, 55 employees have been declared in the DIMONA system for 365 days of which 15 employees work only 24 hours a week.

- $(365 \text{ days} \times 40 \text{ employees}) + ((365 \text{ days} \times 15 \text{ employees})/2) = 14.600 + 2.737,50$
- $= (17.337,50 / 365 \text{ days}) = 47,50$

⇒ The usual average employment in this example amounts to **47.50** which means this company won't have to organize social elections in 2024.

(ii) Temporary agency workers

Companies are required to keep record of the number of temporary agency workers employed during the reference period for temporary agency workers, as well as of the number of days worked by each temporary agency worker. On this basis, the average employment of temporary agency workers can also be calculated.

Indeed, the average number of temporary agency workers is calculated by dividing by 92 the total number of calendar days during which each temporary agency worker, who does not replace a regular employee whose employment contract is suspended, has worked for the company during the reference period.

When the temporary agency worker's schedule represents less than 75% of a full-time work schedule, the temporary agency worker is counted as half in the calculation.

Example:

6 temporary agency workers are registered for 50 days during the reference period, of which 2 temporary agency workers work according to a work schedule of 28 hours per week.

- $(50 \text{ days} \times 4 \text{ temporary agency workers}) + ((50 \text{ days} \times 2 \text{ temporary agency workers})/2) = 250$
- $= (250 / 92 \text{ days}) = 2,72.$

⇒ The average number of temporary agency workers in the company amounts to **2.72**. These should therefore be added to the average number of regular employees to assess if the aforementioned employment thresholds have been exceeded.

If your company is close to one of these thresholds, it is essential to make a detailed calculation of the average employment within the organization. Given the complexity of these calculations, getting assistance from professionals is highly recommended.

Our Employment & Benefits Practice is monitoring the developments on this topic closely. We will make sure you are up-to-date about it. If you have questions on what your company can already do now in view of the social elections in 2024, our team is standing by to assist you.



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