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PERSONNEL & TRAINING

Ten Things Every Employer Should Know About The "ICE" Regulations

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The Information and Consultation of Employee Regulations 2004 (the "ICE" Regulations) came into force in April 2005

1. The Regulations give employees the right to be both informed and consulted about key decisions affecting their employers' businesses and their employment prospects.

2. They initially applied to "undertakings" employing 150 or more employees. From 6 April 2007 the Regulations will also apply to those businesses with 100 or more employees and from 6 April 2008, to those with 50 or more employees.

An "undertaking" is 'a public or private undertaking carrying out an economic activity, whether or not operating for gain'. Individual companies, partnerships and charities are all capable of constituting undertakings.

3. The requirement to inform and consult is not automatic. It is only triggered when there is either a formal request from employees to negotiate an information and consultation agreement or by the employer electing to start the process off itself.

To be valid, an employee request has to be made by at least 10% of the employees in the undertaking, subject to a minimum of 15 employees and a maximum of 2,500. The request must be in writing and must state the names of the employees making it.

4. An employer who already has a valid pre-existing agreement with its employees can ballot its workforce to see whether or not they want a new agreement. If the majority of the workforce does not endorse the request to negotiate a new agreement, the pre-existing agreement will continue.

If the workforce does endorse the request to negotiate a new agreement or if there is no pre-existing agreement in existence, then the employer must negotiate an information and consultation agreement with its employees. The employer has a period of three months to elect employee representatives to negotiate with and for those negotiations to commence. The parties have a further six months (which may be extended if both parties agree) within which to reach a negotiated information and consultation agreement.

5. The agreement must set out how information is to be given to employees and the nature and extent of the consultation that will take place in relation to that information. Although there are no statutory requirements as to what matters the employer must agree to inform and consult on, it is likely that employees are going to want an agreement that will cover issues such as pay and conditions, decisions that may result in

redundancies, re-structuring of personnel or a change of employer and working conditions.

Where no agreement is reached between the parties, the default standard provisions will apply.

6. There are standard provisions that will apply in the event that the employer either fails to commence negotiations with its employees at all or where it cannot reach a negotiated agreement with them.

These are:

- if not already elected, a minimum of one information and consultation representative will need to be elected per 50 employees;
- the employer is then obliged to inform and consult the elected representatives on various matters set out in the Regulations.

7. In order for a pre-existing agreement to be "valid" for the purposes of the Regulations it has to satisfy the four criteria set out below and be in existence before the employer receives the employees' request to negotiate a new agreement under the Regulations.

A valid agreement must:

- be in writing;
- cover all employees in the undertaking;
- set out how the employer is to give information to the employees or their representatives and to seek views on such information;
- have been approved by the employees.

8. Until such time as an employer receives a formal employee request to negotiate an information and consultation agreement, he is not obliged to do anything under the Regulations.

9. Enforcement of the Regulations or an agreement is by way of complaint to the Central Arbitration Committee ('the CAC') within three months of the date of the alleged default.

If the CAC upholds a complaint it can make an order requiring the defaulting party to comply with the negotiated agreement, or if there isn't one, with the default standard provisions.

If the CAC acknowledges that the employer is the defaulting party, an application can also be made to the Employment Appeal Tribunal who can fine the employer up to £75,000.

10. There is no obligation upon employers to do anything until they receive a valid request from their employees. Employers could consider putting a voluntary agreement in place to lessen the impact of the Regulations.

There are several advantages to doing this, including:

- negotiating an information and consultation agreement at a time that is convenient to the employer as opposed to having to deal with an employee request at the time it is made;
- not being subject to the constraints of a six month time limit in which to negotiate an agreement;
- the ability to negotiate an agreement containing more favourable provisions than those contained in the standard default provisions set out in the Regulations;
- a possible deterrent to union involvement in the workplace if employees feel they are already informed and consulted over matters that are important to them.

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