



THE INFORMATION and CONSULTATION of EMPLOYEES REGULATIONS

The duty to inform and consult now applies to businesses with 50 or more employees (and it includes consultation on changes to pension schemes)!

[The ICE Regulations](#)

The Information and Consultation of Employees Regulations 2004 ('the ICE Regulations') have been extended with effect from 6th April 2008 to cover businesses with 50 or more employees.

The ICE Regulations set out minimum rights for employees to be informed and consulted by their employers in respect of a number of workplace issues. An employer must initiate negotiations to reach an agreement ('a negotiated agreement') where at least 10% of the employees in an undertaking (subject to a minimum of 15 employees) have requested that he do so. The ICE Regulations set out the procedure an employer must follow when they receive a request. This can be a complex exercise. It can also be costly if the employer does not follow it correctly. The Employment Appeal Tribunal ('EAT') has recently issued the first penalty notice for an employer's failure to comply with its obligations under the ICE Regulations. The EAT considered the employer's failure to be "a very grave breach affecting many employees" and fixed a penalty of £55,000 out of a maximum of £75,000.

However, it is not all bad news! An employer may not have to put in place a negotiated agreement if there is a pre-existing agreement. A pre-existing agreement is usually simpler to negotiate and implement than a negotiated agreement. It can be an agreement with employees or their representatives. It can also be used when an employer is trying to make changes to pension schemes (see below). We, therefore, recommend employers set up a pre-existing agreement rather than wait until employees make a request.

[The Pension Regulations](#)

Finally, if you employ 50 or more employees and make contributions into an occupational pension scheme or a personal pension scheme ('the schemes'), the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendments) Regulations 2006 may apply to you.

If you are planning to make changes to the schemes such as closing the scheme to new members, increasing the normal pension age and/or stopping further contributions into the scheme, you may have to consult with employees before making the changes.

The Pension Regulator has the power to issue improvement notices, specifying what steps an employer must take. If an employer fails to comply with such notices, the Pension Regulator may award a penalty of up to £50,000.

Consultation must take place at least 60 days before the change takes effect, unless you already have agreed information and consultation arrangements with trade unions or under the ICE Regulations. So if you have a pre-existing agreement in place that covers consultation on changes to pension schemes, you can follow the procedure under that agreement instead.

[What should you do?](#)

You may be considering a restructure of your business or making changes to employees' benefits (including pension schemes) in light of the current economic climate. Such changes may fall under either the ICE Regulations or the Pension Regulations.

OUR CORPORATE EMPLOYMENT SERVICES TEAM WOULD BE HAPPY TO GUIDE YOU THROUGH THE PROCESS AND/OR HELP YOU SET UP ANY CONSULTATION ARRANGEMENTS REQUIRED UNDER THE REGULATIONS. PLEASE CONTACT ROSINE DAWSON ON 01908 300710. OR ON rosine.dawson@borneos.co.uk

Whilst we have attempted to make this briefing as accurate as possible, detailed advice should be obtained before taking or refraining from action as a summary of this nature can never be a substitute for a considered professional opinion.

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