

Works councils: request must be made by 10% of the whole business' workforce

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In the context of the Information and Consultation of Employees Regulations 2004, an “undertaking” refers to a legal

entity – i.e. the employer as a whole – rather than individual business units.

The ICE Regulations provide that employers must set up information and consultation agreements, effectively a “worker’s council” if its employees make a valid request to negotiate. In order for such a request to be valid, it must be made by a minimum of 10% of the employees in the business subject to a minimum of 15 and a maximum of 2,500.

A group of 28 staff employed by Cofely Workplace Ltd put in a request to form a worker’s council. They amounted to 13% of the staff employed at the particular workplace, but only 0.3% of Cofely’s total workforce of 9,200 employees. The staff argued that the threshold refers to the numbers of employees in a specific place of work rather than the entire company, so their request was valid.

The Employment Appeal Tribunal disagreed, holding that the threshold referred to Cofely as a whole. The regulations were not intended to apply to specific business units.

Moyer Lee and others v Cofely Workplace Ltd UKEAT/0058/15

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