Woolworths spurs landmark decision

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Under UK law, a duty to inform and consult employees as a group is triggered when an employer is proposing to make 20 or more redundancies at 'one establishment' in a 90 day period. If the duty is breached, a 'protective award' can be claimed of up to 90 days' gross pay per employee. This appears to be at odds with the European Directive (on which the UK

legislation was based) which does not refer to the need for employees being at “one establishment” in order for the consultation obligations to apply.

In 2009, Woolworths went into liquidation making thousands of employees redundant. On behalf of the employees, two unions brought claims for ‘protective awards’ on the grounds that the liquidators had failed to consult with employee representatives ahead of the redundancies.

This case turned upon whether each Woolworths shop was an establishment in its own right. If each shop was not an establishment, then the duty to consult was not engaged in respect of stores with less than 20 proposed redundancies. The Employment Appeal Tribunal ruled that the UK provisions should be interpreted consistently with the Directive and the words “at one establishment” should be disregarded.

Therefore, where an employer proposes 20 or more redundancies across its organisation within a 90 day period, it will have collective consultation obligations even if the number of employees proposed for redundancy at each of its sites is fewer than 20. For example, if an employer was proposing to make 20 employees redundant within a 90 day period, the consultation obligations would be triggered whether all 20 employees are employed at one site or across various sites.

This decision brings about a substantial change with significant consequences for employers with multiple sites. In order to avoid the risk of expensive collective claims, employers need to ensure that redundancies across the business are monitored centrally and, where necessary, that the collective consultation redundancy obligations are met.

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