
STATUTORY INSTRUMENTS

2004 No. 3426

**The Information and Consultation
of Employees Regulations 2004**

PART II

EMPLOYEE NUMBERS AND ENTITLEMENT TO DATA

Calculation of number of employees

4.—(1) Subject to paragraph (4), the number of employees for the purposes of regulation 3(1) shall be determined by ascertaining the average number of employees employed in the previous twelve months, calculated in accordance with paragraph (2).

(2) Subject to paragraph (3), the average number of employees is to be ascertained by determining the number of employees employed in each month in the previous twelve months (whether they were employed throughout the month or not), adding together those monthly figures and dividing the number by 12.

(3) For the purposes of the calculation in paragraph (2) if, for the whole of a month within the twelve month period, an employee works under a contract by virtue of which he would have worked for 75 hours or less in that month—

- (i) were the month to have contained 21 working days;
- (ii) were the employee to have had no absences from work; and
- (iii) were the employee to have worked no overtime,

the employee may be counted as representing half of a full-time employee for the month in question, if the employer so decides.

(4) If the undertaking has been in existence for less than twelve months, the references to twelve months in paragraphs (1), (2) and (3), and the divisor of 12 referred to in paragraph (2), shall be replaced by the number of months the undertaking has been in existence.

Entitlement to data

5.—(1) An employee or an employees' representative may request data from the employer for the purpose of determining the number of people employed by the employer's undertaking in the United Kingdom.

(2) Any request for data made under paragraph (1) must be in writing and be dated.

(3) The employer must provide the employee or the employees' representative who made the request with data to enable him to—

- (a) make the calculation of the numbers of employees referred to in regulation 4, and
- (b) determine, for the purpose of regulation 7(2), what number of employees constitutes 10% of the employees in the undertaking.

Complaint of failure to provide data

6.—(1) An employee or an employees' representative who has requested data under regulation 5 may present a complaint to the CAC that—

- (a) the employer has failed to provide the data referred to in regulation 5(3); or
- (b) the data which has been provided by the employer is false or incomplete in a material particular.

(2) Where the CAC finds the complaint to be well-founded it shall make an order requiring the employer to disclose data to the complainant which order shall specify—

- (a) the data in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant;
- (b) the date (or if more than one, the earliest date) on which the employer refused or failed to disclose data, or disclosed false or incomplete information;
- (c) a date, not being less than one week from the date of the order, by which the employer must disclose the data specified in the order.

(3) The CAC shall not consider a complaint presented under this regulation unless it is made after the expiry of a period of one month beginning on the date on which the complainant made his request for data under regulation 5.