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Employer Update

Collective Redundancies in the UK – the Woolworths case

By Ivor Gwilliams

Briefing Note

In a ruling that will be warmly received by UK employers, the European Court of Justice ("**ECJ**") (following the opinion of the Advocate General given in February this year) held last week that there is no requirement under EU law for an employer to take account of the number of proposed dismissals across its entire business when determining whether the threshold for collective redundancy consultation has been reached. It is sufficient to determine this by reference to each individual local establishment

In the 2013 case of *USDAW v Ethel Austin* (known as the *Woolworths* case), the UK Employment Appeal Tribunal ("**EAT**") had held that the trigger point for collective redundancy consultation under UK legislation was inconsistent with EU law. Previously, where an employer in the UK was proposing to make redundant 20 or more employees at one 'establishment' within a period of 90 days or less, then the collective redundancy consultation rules would apply. This required the employer to consult with employee representatives over a period of 30 or 45 days (depending on the number of proposed redundancies). However, the EAT found that the words 'at one establishment' were inconsistent with the relevant EU Directive and should be disregarded. The consequence was that an employer would be required to consult collectively with its workforce when it proposed to dismiss 20 or more employees across all of its establishments, resulting in collective consultation being required more frequently in the UK. UK legislation, which stated that only employees at individual local 'establishments' needed to be counted, was ruled to be incompatible with EU law. As a result, the EAT's decision was appealed to the Court of Appeal, which referred the case to the ECJ. Following last week's ruling by the ECJ, the case will return to the Court of Appeal, which is likely to overturn the EAT's decision and decide that the individual stores can be classified as separate establishments.

Practical Implications

The EAT's approach in the *Woolworths* case had considerably extended the burden of collective redundancy consultation by requiring all proposed redundancies across a business to be taken into account when deciding whether the threshold for collective redundancy consultation was triggered. In practice, this meant that potentially all redundancies (even a single

redundancy at a specific site) could be subject to collective consultation because of other redundancies happening at the same time elsewhere in the business. This further raised the possibility of substantive protective awards (of up to 90 days' pay per employee) if the obligation was not complied with. Where large numbers of employees are being made redundant, this penalty can add up to millions of pounds. The impact of the ruling on UK employers was more frequent collective consultation obligations, resulting in increased costs and delays.

Following the ECJ's decision, the position in the UK will revert to the pre-*Woolworths* position, where the threshold for collective redundancies would be more difficult to reach (i.e. the pool for establishing the threshold would be based on each local employment unit rather than on the business as a whole). However, it should be noted that if an employer has several sites (e.g. factories, retail outlets, etc.) in one town/area and workers are shared across these sites or the sites are under common management, then those sites together might constitute one 'establishment'.

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