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Employee Engagement in Employee Ownership

It is widely accepted that a significant contributing factor to the success of employee owned companies is the greater level of employee engagement in decision making.

As is the case with non-employee owned businesses, employee owned companies usually have a board of directors with the designated responsibility of running the business. However, the boards of employee owned businesses excel at developing effective means of engaging with employees to enable that wider base to influence the business that they own.

This information sheet summarises some of the legal and statutory structures commonly used for employee engagement.

1. Employee Directors

Some employee owned companies appoint or elect one or more employees to sit on the board of directors as a statutory director (formally appointed under the Companies Act). Employee Directors will not normally hold management roles and so add a perspective to the board from the wider employee base.

The benefits of being an employee director include having a voice and ear amongst the key decision makers of the business. The associated responsibilities of the employee director include the fiduciary duties and liabilities of statutory directors such as a duty of confidentiality, a duty to act in the best interests of the company (above his or her own interests) and the risk of personal civil or criminal liability for the actions and decisions of the board.

2. Employee Trustees

Employee owned companies will often have an Employee Ownership Trust (EOT), Employee Benefit Trust (EBT) and/or Share Incentive Plan (SIP) in place to enable employees to indirectly or directly own the whole or part of the business. Employees may be appointed or elected as trustees of EOTs, EBTs and SIPs to help manage the affairs of the trust for the benefit of the other employees. The role of trustees as shareholders includes ensuring the board of the trading business is running a successful business, but trustees do not run the business themselves.

3. Employee Councils

Although very effective for collaboration and engagement across a business, Employee Councils are not suitable for every employee owned businesses. They are unnecessary in businesses with few employees.

Employee Councils will not work without trust and cultural acceptance of both the concept and the representatives involved. Plus, the need for effective and timely decision making must be balanced with the advantages of wider collaboration beyond the conventional decision makers in the business (such as the directors). However, an essential element of employee ownership is successful employee engagement, and Employee Councils in the right environment can be the most effective and popular way of achieving this.

4. Interplay of Trade Unions

Trade Unions are one alternative to an Employee Council which may already exist in a larger business converting to being employee owned. A recognised union that is functioning well and that has been founded by a democratically accepted process can be an effective way of engaging with employees on key issues such as pay, training, incentives and working conditions. They may also work alongside an Employee Council.

5. The Information and Consultation of Employees Regulations 2004 (ICE)

Often referred to as national works councils or domestic works councils, the ICE Regulations help employers and employees establish structures and govern how they will consult their UK workforces about economic and employment-related matters.

Under the ICE Regulations, employees in larger businesses (50+ employees) have a legal right to request to negotiate an information and consultation procedure if they have sufficient support. However, if the employer already has a pre-existing agreement in force, the employer then has greater control and flexibility in the negotiating process.

In many cases a pre-existing agreement supersedes the more formal and prescriptive elements of the ICE Regulations and for this reason, employers are encouraged to consider coming to an agreement with employees before they are required to negotiate following an employee ballot.

6. European Works Councils (EWC)

The purpose of a EWC is to discharge the requirements under European law for informing and consulting employees at European level. The UK Government's view is that the focus of a EWC should be on transnational, not national issues (as compared with the ICE Regulations (above) that are concerned only with issues of a domestic nature).

European Works Councils are a consultative body set up by larger employers with operations across more than one European member state. To give an indication of size, the minimum staff levels for a businesses (or a group of companies) is at least 1,000 employees across EEA member states and at least 150 employees in each of 2 or more of those member states.

How Wrigleys can help

Our Employment Team can help you to devise and draw up new structures and statutory agreements, or refurbish and maintain existing agreements.

Our HR Consultancy Team can help you with the training of employee representatives.



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About Wrigleys

Wrigleys Solicitors LLP is a leading law firm specialising in employee ownership, pensions trusts, family trusts, charities, social enterprise and employment law.

Solicitors at Wrigleys have been advising on employee ownership since 1987.

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