

Briefing Note

TUPE – a quick guide

The Transfer of Undertakings (Protection of Employment) Regulations 2006 are commonly known as TUPE. TUPE essentially aims to ‘do what it says on the tin’ - it protects employment. TUPE is not optional and as you will see from this Note, its effects can be far reaching and time consuming. This Note sets out a summary of the key aspects of TUPE.

What is a relevant transfer?

TUPE applies where there is a ‘relevant transfer’. This means either:

1. a transfer of a business or undertaking or part of one (for example, a merger or acquisition); or
2. a client engaging a contractor to do work on its behalf, re-assigning such a contract or bringing the work back in-house (for example, contracting out office cleaning).

TUPE does not apply to share sales.

What happens to employees when TUPE applies?

Where there is a relevant transfer, those employees employed in the relevant business or undertaking or part of it will automatically transfer on their existing terms and conditions of employment to the buyer or incoming contractor (known as the **transferee**). The transferee effectively steps into the shoes of the seller or client (known as the **transferor**) with regard to the employees.

The employees are protected against having their terms and conditions of employment changed in connection with the transfer.

All of the transferor’s rights, powers, duties and liabilities in connection with the employees pass automatically to the transferee. This includes any liabilities for unpaid wages or claims, such as unfair dismissal or discrimination or for personal injuries. Any acts or omissions of the transferor before the transfer are treated as having been done by the transferee.

Employees may object to the transfer, but if they do, their employment terminates on the transfer date. This is not treated as a dismissal.

Obligations to inform and consult

Both the transferor and transferee must inform and, in some cases, consult with recognised trade unions or elected employee representatives. If appropriate representatives are not already in place, the employer will need to hold elections to appoint them. If the business has fewer than ten employees, the employer can inform and consult with employees directly rather than through their representatives.

The transferor and transferee must inform the appropriate employee representatives of the fact that the transfer is to take place, as well as the legal, social and economic implications of the transfer.

The duty to inform arises on every TUPE transfer, but the duty to consult only arises if either the transferor or transferee envisage taking measures in respect of the employees. Measures has been widely interpreted to include any action, step or arrangement taken in connection with the transfer.

A failure to comply with these obligations exposes the parties to compensation equivalent to 13 weeks' pay (uncapped) per employee.

Employee Liability Information

The transferor must provide certain information to the transferee not less than 28 days before the transfer takes place. This includes the name and age of those employees being transferred, together with their terms and conditions of employment, information about any disciplinary matters or grievances raised in the previous two years, information about any court or tribunal cases and information about any collective agreements.

Dismissals

Any dismissal because of the transfer will be automatically unfair, unless it can be justified by an economic, technical or organisational reason entailing a change in the workforce. The transferee will be responsible for this liability even if the transferor carries out the dismissal.

Conclusion

Navigating TUPE is no mean feat, it takes time and effort and there are potentially serious implications for employers who ignore it. Both transferors and transferees need to engage with the processes and requirements of TUPE at an early stage to ensure it does not unexpectedly delay or disrupt any deal.

Contact

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