

TUPE De-mystified

What is TUPE?

The term stands for Transfer of Undertakings (Protection of Employment).

TUPE applies when:

- a) work activities transfer from one organisation to another, and employees are affected
or
- b) organisations change ownership through acquisition or mergers.

For example:

- A company employing in-house cleaners decides to outsource this task to an external company
- A maintenance company losing their main contract to another provider
- An engineering business decides to employ their own design team, following years of having this outsourced to an external provider
- A company is bought out by a larger organisation

If the company currently undertaking the activities (the transferor) can show that staff were specifically employed to deliver particular services, the employees assigned to those are protected and must be taken on by the new service provider or owner.

Before

The transferor must disclose all affected employees' details to the incoming employer (the transferee) at least 28 days before the transfer is taking place.

Details should include:

- Name
- Age
- Current Terms and Conditions of Employment, including collective agreements
- Details of any live disciplinary warnings
- Details of any grievances raised in the past 2 years
- Details of any legal action the employees have taken against the employer in the last two years

During

Employees must be consulted with and kept informed about what is happening. For large groups of people, the most efficient way of doing this may be through representatives.

There is no legal limit on the minimum number of consultation meetings. However, we recommend the transferor has an initial meeting to explain the process and answer any questions. Following this, it may be advisable to arrange further meetings until the transferee is able to speak to the affected staff, which usually happens shortly before the transfer completion.

You will be guided on timelines by your legal advisors at the time.

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After

Employees must be awarded the same terms and conditions of employment as they operated under for their previous employer (this may also include certain policies and procedures).

If the transferee wants to make changes to these terms and conditions, they can do so by agreement or through consultation, but only if the changes don't directly relate to the transfer (i.e. saying that changes are proposed to align contracts across the organisation is NOT a valid reason).

It's important to clearly identify reasons for change, since incoming employees are protected indefinitely by law and may file constructive dismissal claims.

If the transferee is considering redundancies, then they must go through a full consultation with all staff affected, which might include staff previously employed by them

For more detailed information, you can read the ACAS guidance:

<http://www.acas.org.uk/media/pdf/r/l/Handling-TUPE-Transfers-The-Acas-Guide.pdf>

If you are ever in a TUPE situation, please ensure you contact your HR Consultant in good time, so we can give correct and timely guidance.

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