

A transfer of undertakings

One of two situations - a business transfer or a service provision change. When a business moves to a new owner in one of these 'relevant transfers', the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

The regulations protect employees to enable them to enjoy the same terms and conditions, with continuity of employment, as they had before the transfer.

TUPE applies when:

- ✓ a business or part of a business moves to a new owner or merges with another business to make a brand-new employer
- ✓ contracting out of services
- ✓ a change of licensee or franchisee
- ✓ the gift of a business through the execution of a will
- ✓ transfers out of companies in administration
- ✓ changing contractors
- ✓ where all or part of a sole trader's business or partnership is sold or otherwise transferred.

TUPE does not apply to:

- ✓ transfers by share take-over
- ✓ transfers of assets only (for example, the sale of equipment alone would not be covered, but the sale of a going concern including equipment would be covered)
- ✓ buying in services from a contractor on a one-off basis – rather than entering an ongoing relationship for the provision of the services
- ✓ a situation where there is a change of business identity, for example if the nature of the work or the organisational structure changes radically
- ✓ the supply of goods for the client's use (for example, supplying food to a client to sell in its staff canteen, rather than a situation where the contractor runs the canteen for the client).
- ✓ transfers of undertakings situated outside the United Kingdom (although these may be covered by the regulations of other member states).

Employee liability information

You must provide the new employer the following employee information; -

- ✓ the identity and ages of the employees who will transfer
- ✓ details of any collective agreements that apply
- ✓ their statements of employment particulars
- ✓ details of any formal disciplinary action taken, or employee grievances raised in the past two years to which either the 2004 or 2009 ACAS code of practice on discipline and grievance procedures applies
- ✓ instances of any legal actions against you in the past two years by the transferring employees and any potential legal actions

Consultation and notification

The current employer must give the following information to all employees that the transfer will affect.

- ✓ That a transfer is to take place.
- ✓ The reason for the transfer and when it is expected to take place.
- ✓ The implications for employees.
- ✓ The measures that the current employer expects to take in relation to the employees.
- ✓ The measures that the new employer expects to take in relation to the employees.

What happens if the transferor or transferee fails to consult and notify?

Failure to consult or notify could lead to an employee being awarded a protective award of up to 13 weeks' pay. Any complaints must be set with a tribunal within 3 months from the date the transfer took place.

After a Transfer

The new employer can't change an employee's terms and conditions if the reason is the transfer itself.

The new employer can change an employee's terms and conditions if the reason is an 'economic, technical or organisational reason' (ETO) involving changes in the workforce or workplace, such as a result of redundancies or a move from a managerial to a non-managerial position. The employee needs to agree to this change.

ETO

- ✓ 'Economic' reasons are to do with how the company is performing.
- ✓ 'Technical' reasons are to do with the equipment or processes the company uses.
- ✓ 'Organisational' reasons are to do with the structure of the company.

Employers should continue to engage with all affected employees on an ongoing basis after the transfer. However, if there are potential redundancies to be made, the employer must continue to inform and consult with representatives and employees as appropriate.