



Guide to TUPE

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When does TUPE apply?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") protects the employment of employees of a business where there is a 'relevant transfer', meaning that:

- there is a sale of a business as a going concern. This may apply in an insolvency situation.
- there is a change of service provider i.e. a service or activity is outsourced to a third party (or contractor) or transferred to another service provider (or contractor) or brought back in-house. This is common, for example, in relation to cleaning, catering, IT and logistics services.

TUPE does not normally apply where a sale is effected by a sale of shares in a company.

What is the effect of TUPE?

In essence, where TUPE applies, the contract of employment of an employee assigned to the business or activity transferred is (normally) automatically transferred from the old employer to the new employer.

TUPE also protects employment in the following ways:

- Continuity of service for the purposes of calculating entitlement to statutory rights such as redundancy payments and unfair dismissal is protected (or in other words carried forward).
- Continuity of service for the purposes of calculating entitlement to benefits e.g. holidays and sick pay is protected.
- Any claims about past acts and omissions of the old employer can be brought against the new employer. This would include, for example, claims for unpaid wages.
- Terms and conditions of employment which apply to employment with the old employer must apply to employment with the new employer. This is a complex area and there are potential exceptions, particularly in relation to pensions, bonuses, commission schemes, share option schemes and restrictive covenants.
- The protection of terms and conditions of employment extends to certain rights under union negotiated collective agreements.
- A dismissal connected with a 'relevant transfer' is an automatically unfair dismissal, subject to qualification requirements and certain statutory exceptions (which may include, for example, a genuine redundancy situation).
- Employees may also claim automatic unfair constructive dismissal where the new employer proposes changes to terms and conditions of employment which breach the protected contract of employment or are otherwise to the employee's material detriment (again subject to certain statutory exceptions).

Information and Consultation

TUPE also requires that employers comply with certain rules that require employee representatives to be informed and consulted particularly in relation to the impact of the transfer on affected employees. These rules apply irrespective of whether there is a trade union and irrespective of the number of employees affected. Such consultation must be meaningful.

Additional obligations to inform and consult with employee representatives may apply where in addition to a 'relevant transfer' there are collective redundancies (see our Brief Guide to Collective Redundancies).

Claims to an Employment Tribunal

Employees are able to enforce their rights under TUPE by making claims to an Employment Tribunal, as follows:

- Claims for unlawful deduction from wages (and possibly claims for breach of contract) where an employer has failed to comply with the terms of the protected contract of employment.
- Claims for unfair dismissal (including constructive dismissal), breach of contract and holiday pay where an employee is dismissed or resigns in response to a failure to maintain protected terms and conditions of employment.
- Claims for failure to inform and consult with employee representatives in relation to a relevant transfer. The award in such claims is up to 3 months' pay per employee. Further awards may be made where, in addition to a transfer, a collective redundancy situation has arisen (see our Brief Guide to Collective Redundancies).
- Claims relating to TUPE are very often brought by groups of employees who have all been treated in the same way. Such claims can be very significant as groups of employees are able to share the cost of Employment Tribunal proceedings and an employer may be exposed to significant risk due to the value of multiple claims.

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This 'Guide to TUPE' is intended as a guide only. TUPE is a very complicated area of Employment Law and specific legal advice should be sought in relation to particular circumstances.

If you would like to discuss any of the issues raised in this Guide please do not hesitate to contact a member of our Employment department.