



A Concise Guide to TUPE **Transfer of Undertakings(Protection of Employment) Regulations 1981**

What is TUPE?

TUPE regulations are the employment legislation which is applied when a business or part of it changes hands.

The purpose of the regulations is to preserve employees terms & conditions of employment if a business or undertaking(or part of one) is transferred from one employer to another. TUPE ensures that they employees automatically become employed by the new employer on the same terms and conditions as they had prior to the transfer.

Understanding the Regulations

Many of the terms of the regulations formed in 1981 and the subsequent amendments are open to interpretation. The basis for applying the rules has largely been determined by case law, which often results in some confusion. Because of this proposals for a revision of the regulations are under review and due to come in to force in April 2006.

When does TUPE apply?

The regulations apply when an undertaking or part of an undertaking, regardless of size, is transferred from one employer to another. For example, a contract to provide cleaning services is transferred in circumstances which legally amount to the transfer of the undertaking to a new employer. That employer may be a new contractor or the business itself if the decision has been taken to bring the provision of the service in-house.

What are the terms and conditions covered TUPE?

Under the regulation employees transfer to the new employer on the same terms and conditions as they had with their old employer, as if their contract had always been with the new employer. This will include pay, hours of work, holiday entitlement, sick pay entitlement and all other benefits offered by the previous employer.

Currently there are certain rights to occupational pension rights which are not covered by TUPE. However, this is being considered as part of the new proposals to be introduced in April 2006.

Most importantly the employees' continuity of service is protected and remains the same after the transfer has taken place.

When a transfer takes place, what does the old employer have to do?

When a transfer is announced i.e. when a contract has been awarded to a new contractor, the existing employer, who is usually the outgoing contractor, is required under TUPE to consult and inform the employees, either in person or through representatives depending on the size of the undertaking.

The old employer must also provide details of all employees' terms and conditions for the new employer to ensure continuity.

When a transfer takes place, what does the new employer need to do?

The new employer has numerous obligations under TUPE to all those employed as part of that undertaking immediately before the time of transfer:

- To communicate with the employees or their representatives prior to, during and after the transfer process.
- To take on the contracts of employment for all employees who were employed in the undertaking directly before the transfer. Employers cannot pick and choose which employees to take on.
- To take over all rights and obligations except criminal liabilities and rights relating to benefits for old age, invalidity or survivors in occupational pension schemes.
- To take over any collective agreements made on behalf of the employees and in force immediately before the transfer.
- To ensure that the terms and conditions of all employees are not worsened in any way (unless the contract of employment provides for changes to be made).

Can an employee be fairly dismissed as a result of the transfer?

Neither, the new or the old employer can fairly dismiss an employee as a result of the transfer or for any reason connected with it, unless the reason for the dismissal is an economic, technical, or organisational one entailing changes for the work force. If there is no such reason the dismissal will automatically be classed as unfair.

If the employer wishes to make changes for an Economic, Technical or Organisation reason a dismissal may be considered fair provided that the employer has acted reasonably in the circumstances in treating that reason as sufficient to justify the dismissal. This would then be a redundancy situation and the usual redundancy procedures should be followed, allowing sufficient time for consultation and relevant notice periods.

What can employees do if they have a complaint arising from a TUPE transfer?

If an employee has a complaint about a detrimental change to their terms and conditions of employment they have the right to terminate their own employment (i.e. resign) and claim unfair dismissal before an employment tribunal, on the grounds that the actions of the employer forced them to resign.

An employee claiming to have been unfairly dismissed as a result of the transfer also has the right to make their claim before an employment tribunal.

Both the new and the old employer may have a case to answer at the tribunal. Unless the employer can prove that the dismissal was fair, as outlined above, the employee will automatically win their case.