Managing TUPE if youre insolvent

If an organisation cannot pay its debts, it is insolvent.

TUPE regulations protect employees' rights when they transfer to a new employer, including transfers when the old employer is insolvent. TUPE stands for Transfer of Undertakings (Protection of Employment).

In a TUPE transfer, the type of insolvency and when it happened will affect:

- who pays any money owed to employees
- what protections employees have under TUPE

If your organisation – or a part of it – is being rescued and transferred or taken over by a new owner ('non-terminal insolvency'), your employees will be protected under TUPE.

If your organisation is closing down ('terminal insolvency'), your employees will not be protected under TUPE because there will be no transfer.

The employer would need to appoint an insolvency practitioner (IP) to deal with the insolvency. Find out more from The Insolvency Service on GOV.UK.

When the organisation is taken over ('non-terminal insolvency')

If the insolvent organisation (the old employer) is sold and stays in business, their employees will automatically transfer to the new employer with their existing terms and conditions.

This includes:

- their original start date
- wages
- holiday pay
- pension contributions

Usually in a TUPE transfer, there must be economic, technical or organisational (ETO) reasons requiring a change in the workforce for the new employer and employees or their representatives to agree any changes to employment contracts after the transfer. The change would have to be related to the transfer.

But if the old employer is insolvent, the new employer or the insolvency practitioner could make changes to employees' employment terms and conditions, if this helps to protect jobs by keeping the business going. They would need to do this in consultation with employee representatives and get their agreement.

Money owed to staff who transfer after an insolvency

If staff transfer to a new employer after their old employer becomes insolvent, the new employer would not be liable for some of the money owed to the staff by the old employer.

The transferred employees could claim some or all of the money they are owed from the Redundancy Payment Service. They would need to get a case reference number from their old employer’s insolvency practitioner before applying.

Find out how to apply to the Redundancy Payment Service on GOV.UK

When the organisation is closed down ('terminal insolvency')

Employees will not transfer to a new employer if the old employer:

- goes into 'liquidation' and closes down
- becomes bankrupt

Instead, the old employer should make their staff redundant.

Money owed to staff

If the old employer is insolvent and closes down, their former employees could claim for some of the money their old employer owes them from the Redundancy Payment Service. The employees would need to get a case reference number from their old employer's insolvency practitioner before applying.

Find out how to apply to the Redundancy Payment Service on GOV.UK

Find out more about:

- TUPE transfers
- managing staff redundancies
- contacting the Insolvency Service on GOV.UK