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TUPE: handling a transfer

1 . Step 1: Check when the rules apply

TUPE regulations protect employees' rights when they transfer to a new employer.

TUPE stands for Transfer of Undertakings (Protection of Employment).

A 'TUPE transfer' is when either:

- an organisation, or part of it, is transferred from one employer to another
- a service is transferred to a new provider, for example when another company takes over a contract for office cleaning

The part of the organisation that’s transferring must be in the UK for TUPE to apply.

The size of the organisation does not matter. For example, it could be a large organisation with many employees, or a small business like a shop or a pub.

Who TUPE regulations apply to

TUPE regulations apply to you if:

- you're the employer making the transfer (the old employer)
- you're the employer taking on the transfer (the new employer)

Your staff will be protected by TUPE regulations if they're legally classed as an employee. However, TUPE regulations might also protect workers. You should get legal advice as this is a developing area.

You will need to make sure you inform and consult all employees affected by the transfer.

For the old employer, this includes:

- employees who are transferring to the new employer
- other employees whose work may be affected by the transfer

For the new employer, this includes:

- employees who are transferring to your organisation
- existing employees whose work may be affected by the transfer

Employees' work may be affected by the transfer for reasons including:

- an organisation or team restructure
- roles or responsibilities changing
- new ways of working

Types of transfer protected under TUPE

The 2 types of transfer protected under TUPE are:

- business transfers
- service provider changes

TUPE regulations can apply to the public and private sectors, as well as charities.

Public sector transfers

TUPE applies to public sector transfers if the transfer is from the public sector into the private sector or from one public authority to another. For example, from the NHS to a local authority.

TUPE does not apply to transfers within the public sector where the employer does not change. For example, transfers within the Civil Service. But employees will still get similar protections under the Cabinet Office Statement of Practice (COSOP).

Find out more about transfers within the public sector on GOV.UK

If it's a business transfer

This is where a business or part of a business moves from one employer to another. This can include mergers where 2 businesses come together to form a new one. It’s possible for the business, or part of it, to have just 1 employee.

In business transfers, the employer must change for TUPE to apply.

A business will have transferred under TUPE when both of the following apply:

- its main assets have transferred to the new employer
- business activities are the same or similar as before

These assets may include:

- employees
- equipment
- the business' premises
- any work in progress
- goodwill, for example the business' reputation or customer base
- intellectual property, for example copyrights or trademarks

TUPE is not likely to apply if it’s a transfer of shares or equipment only. This is a complex area of law so it's a good idea to get legal advice.

In labour-intensive businesses, the employees are the main asset that will transfer to the new employer. For example, in businesses that provide office cleaning or security.

All employees assigned to the business, or part of the business, that's transferring will transfer with it. It's usually clear who these people are, but it's a good idea for the old and new employers to agree who is included in the transferring group.

If it's a change of service provider

This is where contracts are taken over. This can be because:

- a service provided in-house is taken over by a contractor (known as 'outsourcing')
- a contract ends and the work is transferred in-house (known as 'insourcing')
- a contract ends and is taken over by a new contractor (known as 'retendering')

Service provision changes often include contracts to provide labour-intensive services such as:

- catering
- security
- office cleaning
- waste collection
- machinery maintenance

TUPE does not apply if the contract is for:

- the supply of goods only, for example a car manufacturer getting their brake pads from a different supplier
- a single event or short-term task, for example a conference or an exhibition

In service provision changes, employees must be part of an 'organised grouping of employees' to transfer under TUPE.

What an 'organised grouping of employees' is

This is the group of employees carrying out work for the 'client' (the organisation receiving the services). The organised grouping of employees may just have one employee.

The group must be organised to meet the client's needs.

Employees who carry out work that is specifically about providing the service for the client are unlikely to be part of the group. This could include managers who work on maintaining relations with the client.

It's a good idea to agree early on which staff will be included in the group. If the old and new employers disagree on who should be included, both employers might want to get legal advice.

The client must remain the same for TUPE to apply. For example, if the work employees do has been outsourced to a contractor but they still provide the service for the same client.

Sometimes the work is divided between multiple contractors and TUPE might still apply. However, if the service activity is divided between multiple providers and the service is broken up ('fragmentation'), TUPE is less likely to apply. You should get legal advice.

Example of a service provider change

An organisation called DeskCo has contracted out the reception and security of their office to SecureLimited. When the contract ends, they retender the contract to Safeunit.

DeskCo is the client as they are receiving the services. The reception and security staff are part of an organised grouping of employees as they provide services to meet DeskCo's needs. They'll transfer to Safeunit under TUPE. TUPE applies because the client DeskCo remains the same.

Working abroad

TUPE will not always apply to international transfers.

Situations where TUPE could still apply include:

- where an employee works abroad but your organisation is based in the UK
- where the purpose of the transfer is to move your organisation, or part of it, abroad – however this could also be a redundancy situation

If the transfer is a service provision change, TUPE only applies if the organised grouping of employees is based in the UK.

This can be a complex area. To check how TUPE applies to your situation, you might want to get legal advice.

Get help and advice

If you're not sure whether TUPE applies, you can contact the Acas helpline.

You can also book Acas training on TUPE transfers.

2. Step 2: What to do before a transfer

There are things all employers should consider before making a decision on a potential TUPE transfer.

Considerations for all affected employers

First, you'll need to check if TUPE regulations apply to the transfer. Then, you'll need to consider how you'll keep staff informed and whether you may need to request or provide due diligence information.

Keep staff informed

Employers should keep potentially affected staff informed about any transfer plans. By discussing plans with staff early on and considering their views, you're more likely to:

- maintain morale
- understand and reduce any staff concerns early on
- build and maintain trust
- keep staff motivated in their work
- listen to ideas and suggestions from staff
- maintain good working relationships

You should think carefully about when is the best time to tell any potentially affected staff and how you'll communicate with them before, during and after the TUPE transfer.

If you decide to go through a TUPE transfer, by law you must also inform and consult staff representatives to explain why the transfer is happening and discuss any changes you're planning. Find out more about informing and consulting during a TUPE transfer.

Follow due diligence

Due diligence is a process where formal investigations are carried out to find out as much information as possible about the client, service or organisation the potential new employer is thinking of taking on.

It can include details like bonus payments or any enhanced contractual parental leave or redundancy pay.

The potential new employer may also want to request warranties and indemnities to protect their organisation from unexpected costs and liabilities.

Warranties are written statements confirming the employer selling the organisation or transferring the service has done something for the employer looking to take on the transfer, or certain information is correct. For example, confirming the information given about the pay and benefits of transferring employees is correct.

Indemnities are promises to pay compensation for a type of 'liability' (something a person is legally responsible for). For example, indemnity for any employment liabilities after the transfer, such as unfair dismissal claims.

Due diligence is voluntary, but the employer selling the organisation or service is more likely to find a potential buyer if they provide this information.

In a business transfer, due diligence is used to:

- assess risk
- confirm if the transfer is possible
- identify employment costs and other liabilities

In a service provision change, due diligence is used to:

- assess risk
- decide how much to bid for the contract
- identify employment costs and other liabilities
- decide if the service can be carried out with the funds available

The new employer should also make sure employees have all necessary employment checks and qualifications, for example if they have the right to work in the UK or any Disclosure and Barring Service (DBS) checks. Find out more about right to work checks on GOV.UK.

Employers must follow data protection law (UK GDPR) when using, storing and deleting personal data. For example, you must keep data secure and only provide or request the minimum information needed. Find out more about data protection from the Information Commissioner’s Office (ICO).

If you're thinking of taking on an organisation or service under TUPE

Before you decide to take on a TUPE transfer, you should consider things like:

- the benefits or risks – do the benefits outweigh the risks?
- how you'll manage the transfer
- how much you may have to bid
- costs, for example staff employment or redundancy costs
- if there's enough work for staff
- how the transfer will affect existing staff
- how to integrate new employees when they transfer
- whether trade union recognition will transfer
- how to manage staff who may have different terms and conditions
- any changes to working practices ('measures') you may need to take which relate to the transfer
- any risk of redundancies after the transfer

Estimate costs

You should consider any staff employment costs before you decide to take on a transfer. For example, costs of buying new equipment, any new work premises and staff wages.

How much you'll have to pay will depend on the size of the transferring workforce and whether they're paid higher wages than existing staff.

It's also important to consider whether you would have too many staff once the transfer happens. If so, you might need to make redundancies after the transfer and pay redundancy costs. Making redundancies or restructuring an organisation can be a long and costly process. [Find out more about making staff redundancies after a TUPE transfer].

If you're thinking of transferring your organisation or service under TUPE

You should consider how a TUPE transfer might affect your staff and how you'll manage the transfer, including:

- the benefits or risks of the transfer
- whether there will be enough staff remaining after the transfer
- any changes to working practices ('measures') you may need to take which relate to the transfer
- ways you can reassure staff and reduce concerns, for example by sharing any transfer plans

Identify who will transfer

Once you've checked if the transfer is a business transfer or a service provision change, you'll need to identify which staff will transfer to the new employer.

In service provision changes, staff must be part of an 'organised grouping of employees' carrying out work for the 'client' (the organisation receiving the services). It's a good idea to identify who will be included in this group when you're considering a TUPE transfer.

Manage the transfer

You should think about how you’ll manage staff throughout the transfer, including how you'll:

- keep affected staff motivated about the transfer
- make sure work gets done to the same standard before, during and after the transfer
- retain knowledge and skills with your remaining staff
- manage workload after the transfer

Considering these points can help you work out if you're ready to go through a TUPE transfer. By thinking ahead, you're more likely to plan the transfer better and keep good working relationships with your staff.

3. Step 3: Talk with the other employer

Once it's known that a TUPE transfer is going to happen, you should talk with the other employer to agree what to do next.

It can help for both employers to discuss and agree the following:

- which employees are in the group to transfer
- the transfer date

Both employers might also want to discuss:

- if the new employer will meet with the transferring employees and their representatives before the transfer
- if affected employees can visit the new employer's premises to see what it's like

It can be helpful and reassuring for staff if the new employer is there to answer any questions and give information directly. You should both agree what you want to say before any meetings to avoid any misunderstandings.

If you cannot agree on these points or whether TUPE applies to the transfer, you might want to get legal advice.

Make a transfer plan

Both the old and new employers should have a transfer plan and share it with all employees. A plan can help to reduce any staff concerns and make sure you follow the process you outlined.

You should identify who will manage the transfer and make sure they have enough time to make, follow and change any plans as the transfer progresses. It's often best for one person to have this responsibility so there's a clear point of contact and they can oversee communications.

This person should work with any trade union or employee representatives when making the plan. It's a good idea for staff to be involved early on in the transfer process so they feel reassured when the transfer happens. Being transparent with plans and engaging with staff throughout the process will help keep positive relationships with staff.

Use a TUPE transfer plan checklist for the old and new employer

Give employee liability information (ELI)

By law, the old employer must provide the new employer with specific information about the employees transferring. This is known as 'employee liability information' (ELI).

Employee liability information includes:

- their identity
- their age
- their written statement of employment particulars
- any disciplinary and grievance records, or ongoing cases, from the last 2 years
- any agreements between the old employer and a trade union ('collective agreements') that affect the employees' terms and conditions
- any claims related to the employees' employment that they've made against the old employer in the last 2 years or that the old employer believes they may make when they transfer

When the old employer must provide ELI

The old employer must give ELI to the new employer at least 28 days before the transfer date. But it's a good idea to provide this information early on. ELI must be accurate, up to date and provided in a secure way.

If any employees decide they do not want to transfer, the old employer must update ELI as soon as possible and inform the new employer.

Find out more about data protection and ELI from the Information Commissioner's Office (PDF, 230KB)

Checks before sending ELI

The old employer should check if:

- they've included all staff policies which cover any written terms – policies often include terms and conditions not found in employment contracts
- any recently agreed changes to terms and conditions are included in employment contracts
- any terms and conditions are not in writing by checking with a recognised trade union or employee representatives, for example if they were agreed verbally
- any changes to terms and conditions have been agreed for particular employees, for example flexible working arrangements

If ELI is incorrect or not provided on time

The new employer should check if all ELI is provided on time and is correct.

The new employer might want to make a claim to an employment tribunal for compensation if:

- the old employer does not provide the new employer ELI at least 28 days before the transfer date
- any information is incorrect
- the old employer fails to inform the new employer of any ELI changes

If the claim is successful, the new employer could receive at least £500 for each employee the old employer gave incorrect or no information for.

Information the new employer must provide

The new employer must tell the old employer about any 'measures' they're thinking of taking after the transfer. These measures are usually changes to working practices, for example changes to the affected employees' pay dates or working patterns.

The old employer must inform affected employees about these proposed changes.

Find out more about how to inform affected employees

4. Step 4: Inform and consult staff

Before a TUPE transfer, by law both the old and new employers must inform and consult with a recognised trade union or employee representatives.

Follow advice on informing and consulting in a TUPE transfer

5. Step 5: Transfer terms and conditions

On the date of the transfer, employees will automatically transfer to the new employer, along with their:

- length of service ('period of continuous employment')
- employment contract, including their terms and conditions of employment

This means an employee's start date is the same as it was before the transfer and they do not get a new employment contract, it just continues.

Inform employees about a change of employer

The new employer must inform the transferred employees in writing that there's been a change of employer.

The new employer should confirm in writing:

- the employer has changed
- the employee's length of service and contractual rights are the same as before the transfer

The new employer might want to add these details to their written terms ('written statement of employment particulars').

The new employer should talk with staff soon after they transfer to keep them informed and listen to any concerns they may have. This will help to reassure and integrate staff, as well as build good working relationships.

Which terms and conditions transfer

Employees' terms and conditions of employment may include:

- job title and role
- pay, including any overtime pay
- contractual bonuses
- commission
- sick leave and pay
- holiday leave and pay, including any outstanding holiday pay or any arrangements to carry over holiday from previous leave years
- allowances
- insurance-based benefits
- contractual enhanced redundancy pay
- any terms agreed through 'collective agreements' (agreements between an employer and a trade union)
- any contractual terms from other sources ('incorporated terms'), for example from a staff handbook or an agreement affecting many employees
- any terms that may not be found in an employment contract, for example a lorry driver needing a valid driving licence to work

The new employer should assume all employee terms and conditions transfer unless they get different legal advice.

The new employer must meet the terms of the transferring employment contract. If not, it would be a breach of contract and an employee might be able to make a claim to an employment tribunal.

Find out more about what's included in an employment contract

Pensions

An employee's pension built up to the date of the transfer is protected.

Their pension may transfer to the new employer depending on if they have:

- a personal pension – a pension that employees arrange themselves
- a workplace pension – a pension arranged by the old employer

If they have a personal pension which the old employer was contractually obliged to contribute to, their pension rights will automatically transfer to the new employer. The new employer must pay the same amount into personal pensions as before the transfer.

If they have a workplace pension, it's unlikely to transfer to the new employer because it is exempt from TUPE. This means the new employer does not have to continue the same pension. But you must provide a reasonable alternative scheme.

Early retirement terms may also transfer to the new employer. This is a complex area of law so it's a good idea to get specialist pensions advice.

[Find out more information from The Pensions Regulator]

Collective bargaining

On the date of the transfer, the new employer becomes responsible for:

- any collective bargaining agreements, for example agreed changes to pay and benefits
- any collective bargaining arrangements, for example how often meetings take place and who represents employees in negotiations

Collective bargaining agreements are agreements between the old employer and a trade union that affect employees' terms and conditions.

Many collective agreements continue for an indefinite period. For example, if employees' holiday (annual leave) is increased or a shorter working week is agreed, it is likely to continue indefinitely.

Some collective agreements may only cover a specific period. For example, an agreed change to employees' pay may only be for one year.

After one year, the new employer can renegotiate terms and conditions in collective agreements if overall it does not make an employee's employment contract worse.

Trade union recognition

Trade union recognition is when an employer agrees that their employees can be represented collectively by a trade union.

Under TUPE, trade union recognition only transfers to the new employer if the transferring employees keep a separate identity within the new employer's organisation.

If recognition transfers to the new employer, it will transfer with the same terms as with the old employer.

If the transferring employees do not keep a separate identity, the recognition agreement will end but the trade union could try and negotiate a new one.

Example where recognition transfers

Clothes Union is the recognised trade union for ShoppingCo's team of security staff. ShoppingCo decides to 'outsource' (transfer to a contractor) its security service and transfers its security team to Security Limited. Although they are now employed by Security Limited, the security staff continue to work at ShoppingCo and keep a separate identity to Security Limited's wider security workforce. Recognition of Clothes Union as the trade union for the security staff transfers to Security Limited.

Example where recognition does not transfer

Power Union is the recognised trade union for ElectricsCo's team of electricians. ElectricsCo merges with Sparksnet to form a new organisation, E-Spark. All of the staff transfer to E-Spark. The electricians from the old organisations become one workforce. The employees from ElectricsCo no longer have a separate identity from the other E-Spark employees so recognition of Power Union does not transfer.

Outstanding holiday and pay

On the date of the transfer, the new employer becomes responsible for:

- any outstanding wages or unpaid bonuses
- any outstanding holiday
- any arrangements to carry over holiday from previous leave years or 'enhanced' holiday (if employees get more than the legal minimum)

The new employer is still liable for any outstanding holiday and pay even if they are unaware of these entitlements.

If any ELI provided by the old employer is inaccurate, the new employer may want to make a claim to an employment tribunal against the old employer.

Example – outstanding bonus

An employee is transferred to a new employer in January. Their old employer previously paid a performance-related bonus in March. Their new employer is now responsible for paying them the bonus in March every year.

Example – outstanding holiday

An employee's holiday year starts on 1 January and ends on 31 December. They have 10 days' holiday left when they transfer on 1 October. Their new employer must allow them to take this holiday before the end of their leave year, if the employee wants to.

Changing employees' terms and conditions

The new employer must be careful when agreeing changes to transferred employees' terms and conditions. This is because there are other things to consider if the main reason for changing an employment contract is the transfer.

Find out more about changing an employment contract after a TUPE transfer

6. Step 6: Manage staff after a transfer

TUPE transfers can be stressful for your employees and their representatives. It’s important that you support your employees and help them to adjust to the changes.

Inform and consult after the transfer

By law, once the transfer has happened, you no longer need to inform and consult staff representatives and affected employees about the transfer unless there are:

- any proposed changes in working practices
- redundancies

But it’s a good idea to continue informing and consulting affected staff to understand their concerns and support them as they settle in after the transfer. You should communicate regularly with your employees and their representatives and continue to work through transfer plans to make sure it’s successful.

Steps the old employer should take following a transfer

You should talk regularly with, and listen to, your staff to make sure:

- any reorganisation of teams or working practices has been successful
- they can manage the workload

It's good practice to:

- reassure your remaining affected employees through regular meetings and updates
- listen and respond to their concerns, and help to maintain performance and quality of work
- check they are coping well after the transfer
- look at introducing team building activities and reward schemes to boost morale

Steps the new employer should take following a transfer

Employees who have transferred to your organisation may have different ways of doing the same job.

To help the transferred employees settle in, you should:

- welcome them to your organisation, including introducing them to any new team members and their line manager
- use the induction process to introduce rules, policies and standards so they know what is expected of them and how things should be done
- hold regular team meetings to integrate any new employees with their line managers and existing staff
- put in writing any changes to their terms and conditions of employment, for example the name and address of their new employer and what is happening to their pension arrangements
- check they understand the terms which transferred over with them
- make sure any reasonable adjustments have been successfully implemented for disabled employees

It's good practice to:

- listen to employee suggestions and arrange discussions to generate ideas to improve processes - this could help identify and resolve problems before they escalate
- ensure line managers support employees while they're adjusting to change
- consider appointing buddies or mentors for new employees to deal with queries and identify problems as soon they arise

If you plan on making any changes in working practices ('measures') or redundancies, you must inform and consult staff and their representatives.

If transferred employees do not want to work for you

If any employees want to leave after transferring to your organisation, they'll need to give written notice by resigning.

In these situations, you'll need to:

- confirm the notice period and agree a leaving date
- pay them any outstanding wages and holiday they've built up ('accrued') but not yet taken when their employment ends

They will not usually be entitled to any additional payments such as a redundancy payment or make a potentially successful claim for constructive unfair dismissal if they object without good cause.

They might be able to object to the transfer and make a claim to an employment tribunal if they were not informed about the transfer before it happened. See If you do not inform or consult.

Find out more about:

- ending an employment contract
- working out notice period and pay

More information

You can find more information on TUPE transfers and how to handle:

- changes to employment contracts
- redundancies
- insolvency