

TUPE handling a transfer

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](#).