|  |  |
| --- | --- |
| **TUPE "Transfer of Undertakings" guidance for employees** |  |
|  |  |
| . |  |
|  |  |
| **What is TUPE?** |  |
| TUPE – Transfer of Undertakings (protection of Employment) Regulations preserve employees' terms and conditions when a business, undertaking, or part of one, is transferred to a new employer. |  |
|  |  |
| **How does this affect me?** |  |
| * When the undertaking changes hands, you will immediately become an employee of the new employer. It will be as if you had agreed your contract with the new owner. You will have all the same terms and conditions. Your continuity of employment is preserved, as are your terms and conditions of employment under your [contract of employment](http://www.netlawman.co.uk/bizdoc/employment-contract.php?docid=EMP001) (except for certain occupational pension rights – more on this later); * You have a right to be informed about the transfer. You must also be consulted about anything different which the old or new employer envisages taking which will affect you. |  |
|  |  |
|  |  |
|  |  |
|  |  |
| **Redundancy** |  |
| Dismissed employees may be entitled to redundancy payments. Employers must also ensure that the required period for consultation with employees' representatives is allowed. |  |
|  |  |
| Entitlement to redundancy payments will not be affected by the failure of any claim which an employee may make for unfair dismissal compensation. |  |
|  |  |
| Where there are redundancies and it is unclear whether the Regulations apply, it will also be unclear whether the previous or the new employer is responsible for making redundancy payments. In such cases employees should consider whether to make any claims against both employers. |  |
|  |  |
| **What should you know?** |  |
| If you are a member of a trade union, your representative, should tell you the following. If you are not represented by a union, another representative will be chosen for you. You should be told: |  |
| * When and why the transfer is going to take place; * The legal, economic and social implications of the transfer for you; * Whether the employer envisages taking any action (reorganisation for example) and if so, what action is envisaged? |  |
|  |  |
| **Can I be dismissed because of the transfer?** |  |
| Your new employer cannot dismiss you upon transfer, unless the main cause of dismissal is a carefully defined “economic, technical or organisational” reason, which requires changes to the workforce and that they are acting “reasonably” in treating that reason as sufficient to justify a dismissal. If your new employer does dismiss you for one of these reasons, they must pay you redundancy compensation at the same level as your original redundancy terms. You can still claim for unfair dismissal against your new employer, if you believe that you have not been treated fairly. |  |
|  |  |
| **Can I claim for unfair dismissal?** |  |
| If your new employer does not provide comparable overall terms and conditions of service, including pension arrangements, you would have a claim for unfair dismissal. |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

**Transfer of undertakings (TUPE)**

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects employees' terms and conditions of employment when a business is transferred from one owner to another. Employees of the previous owner when the business changes hands automatically become employees of the new employer on the same terms and conditions.

It's as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved. Both old and new employers are required to inform and consult employees affected directly or indirectly by the transfer.

**Questions and answers**

**Which transfers are covered?**

TUPE applies when an undertaking or part of it is transferred from one employer to another where:

* all or part of a sole trader's business or partnership is sold or otherwise transferred
* a company, or part of it, is bought or acquired by another (if the second company buys or acquires the assets and then runs the business rather than acquiring the shares only)
* two companies cease to exist and combine to form a third
* a contract to provide goods or services is transferred in circumstances which amount to the transfer of a business or undertaking to a new employer.

TUPE can apply regardless of the size of the transferred undertaking, ie from large organisations employing thousands of employees to small businesses like a village shop with one assistant.

**Which transfers are not covered?**

TUPE does not apply to:

* transfers by share take-over because, when a company's shares are sold to new shareholders, there is no transfer of the business: the same company continues to be the employer
* transfer of assets only (eg the sale of equipment alone wouldn't be covered but the sale of a going concern including equipment would be covered)
* transfer of a contract to provide goods or services where this doesn't involve the transfer of a business or part of a business
* transfers of undertakings situated outside the UK.

**What happens during a transfer of undertakings?**

If you feel you have been unfairly dismissed because of a transfer, you should raise the matter by way of your employer's internal procedures. If this doesn't resolve the issue, you ultimately have the right to complain to an employment tribunal if you've been employed continuously for a year or more, or two years for employees starting employment on or after 6th April 2012.  
  
If you were employed immediately before the transfer (or if you would have been had you not been unfairly dismissed for a reason connected with the transfer) you automatically become an employee of the new employer, unless you object to being transferred and inform either employer. Your continuity of employment is not broken and you keep all the rights and obligations under your contract of employment with your previous employer.

What is a TUPE transfer

The term “TUPE” refers to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246). A “TUPE transfer” is a transfer of a business to which the Regulations apply. The Regulations protect employees when the ownership of the business for which they work changes hands by providing that their contracts of employment transfer automatically to the new employer.

The Regulations apply when the whole or part of an employer’s business or undertaking is transferred as a going concern to another employer. They also apply to a "service provision change" where a contract for the performance of a function is outsourced, brought back in-house or transferred to a new contractor.

[Is an employer obliged to consult with employee representatives on a TUPE transfer?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19879&page=1&mode=close#19879)

There is always an obligation to provide information to employee representatives, but the obligation to consult arises only if either the transferor or the transferee anticipates taking measures in relation to affected employees in connection with the transfer.

[[http://www.xperthr.co.uk/App_Themes/default/Images/minus.gif](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19882&page=1&mode=close#19882)Who has to be informed and consulted on a TUPE transfer?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19882&page=1&mode=close#19882)

Employers must consult either trade union representatives if an independent trade union is recognised by the employer in respect of the affected employees, or if no union is recognised, employee representatives. Employee representatives may be elected specifically to be informed or consulted about the transfers, or they may have been elected for another purpose.

There is always an obligation to provide information to employee representatives, but the obligation to consult arises only if either the transferor or the transferee anticipates taking measures in relation to affected employees in connection with the transfer. Employers contemplating a transfer must inform appropriate employee representatives long enough before the proposed transfer to enable meaningful consultation to take place.

Each party has to inform (and, where appropriate, consult with) only its own affected employees. The transferor is not obliged to consult with affected employees about measures envisaged by the transferee although it does have to inform them about those measures.

[[http://www.xperthr.co.uk/App_Themes/default/Images/minus.gif](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19880&page=1&mode=close#19880)What is the purpose of any consultations that take place on a TUPE transfer?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19880&page=1&mode=close#19880)

Consultations must take place "with a view to seeking agreement". Just keeping the union posted at monthly meetings on the progress of a transfer is not sufficient. The employer must be receptive to the points made on behalf of affected employees and must give them proper consideration before rejecting them.

[e duty to consult in a TUPE situation arises where an employer envisages taking measures in relation to affected employees, but what sort of measures would this cover?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=59315&page=1&mode=close#59315)

'Measures' includes any action, step or arrangement and should be interpreted widely. Measures would include such things as alterations to hours or benefits, a relocation, or redundancies. 'Envisages' is not limited to definite plans and firm intentions, but equally would not cover vague ideas or mere speculation.

[[http://www.xperthr.co.uk/App_Themes/default/Images/minus.gif](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19881&page=1&mode=close#19881)What is the time period over which the employer must consult on a TUPE transfer?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19881&page=1&mode=close#19881)

Unlike in the provisions governing collective redundancies, there is no specified minimum period over which consultations must be conducted prior to the transfer taking place. Although it has been argued that tribunals should have regard to the minimum periods over which consultation must be conducted in collective redundancy situations, there is no link between the TUPE provisions and the redundancy provisions.

Regulation 13(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) states that employers must provide the required information to employee representatives "long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives".

[an employee refuse to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=19736&page=2&mode=close#19736)

The employee can inform the transferor or the transferee that he or she objects to becoming employed by the transferee, in which case the employee's contract with the transferor comes to an end. The employee may pursue a complaint of unfair constructive dismissal if there has been, or is about to be, a significant breach of contract so as to leave him or her with little choice but to resign. The Regulations also allow the employee to make a complaint based on a substantial change in working conditions to his or her material detriment. The latter does not depend on the employer breaching the contract.

[[http://www.xperthr.co.uk/App_Themes/default/Images/minus.gif](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=57198&page=2&mode=close#57198)If an employee in a TUPE situation refuses to transfer, will he or she be entitled to a redundancy payment?](http://www.xperthr.co.uk/faqs/topics/4,47/transfer-of-undertakings.aspx?articleid=57198&page=2&mode=close#57198)

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations) have the effect that an employee's employment automatically transfers to a new employer. The employee's job carries on as before with the only change being the identity of the employer. The fact that the employer's identity has changed does not, on its own, give the employee the right to prevent the transfer of his or her contract, or to complain of constructive dismissal. Regulation 4 states that, where an employee informs either the original employer or the new employer that he or she objects to becoming employed by the new employer, this will have the effect of terminating the employee's contract and he or she is not to be treated for any purpose as having been dismissed. This means that a refusal to transfer will mean that the employee has in effect resigned. It follows that there is no entitlement for the employee to claim a redundancy payment.