



Ashdown Human Resources

Transferring employees (TUPE)

Transferring employees (TUPE)

When does TUPE apply?

TUPE applies when a new employer purchases the business for which an employee works or when an employee works on a service which is transferred to another business (eg the service is outsourced, insourced or remains outsourced but is provided by another business.)

When TUPE doesn't apply

TUPE doesn't apply when there is a transfer of shares that doesn't entail a change of employer, transfers between public bodies or where services are split on a re-tendering exercise but are too "fragmented" to be easily identifiable. It is not possible for the parties to opt out of TUPE or agree that it will not apply.

Effect on contracts of employment

When TUPE applies the new employer (transferee) steps into the shoes of the former employer (transferor). The employee is entitled to retain all of their terms and conditions after the transfer, including continuity of service. The only exclusion is the provision of final salary pension schemes.

Dismissals and redundancies

Dismissal on account of the transfer itself will be automatically unfair. The new employer cannot pick and choose which employees to take on.

Contracts can be varied or redundancies made for a valid "economic, technical or organisational reasons entailing changes in the workforce". An ETO reason could include a reason relating to the profitability of the new employer, the nature of the equipment or production processes or a reason related to the management or organisational structure of the employer's business.

Consultation

Both the transferor and transferee have the legal duty to consult affected employees. Consultation can take place with a recognised trade union or employee representatives. Where there are no employee representatives voting can take place to elect representatives.

Information to be given during consultation includes:

- The fact that a transfer will occur
- The proposed transfer date
- The reasons for the transfer
- The legal, social and economic implications of the transfer for any affected employees
- Any measures that either employer envisage taking in relation to any affected employees.

During consultation the employer must consider and respond to any representations made by the representatives. If the employer rejects the representations they must state their reasons.

The maximum award for failure to comply with consultation obligations is 13 weeks pay per employee.

Please contact us using our contact form if you have any queries regarding our Human Resources services, or if you would like to order.

Email us at: consultancy@ashdowncpd.com or call us at: 01342 545014

Ashdown Human Resources and Ashdown Safety are trading names of Ashdown (Holtye) CPD Ltd.
Registered Company Address: 20-22 Wenlock Road, London, N1 7GU. Company number: 11086285