

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)

TUPE primarily exists to safeguard the rights of employees when their positions of employment are transferred to another employer.

In very general terms, TUPE applies in two circumstances: when there is a transfer of a business or, part of a business and when a client engages a contractor to do work on its behalf, reassigning such a contract or, bringing the work in house. The first circumstance is known as a “business transfer” and the second is known as a “service provision change”.

When TUPE applies, eligible employees are entitled to automatically transfer to the new employer (transferee) with all of their terms and conditions and continuity of service preserved. Eligible employees are also protected from being dismissed when the reason for the dismissal is connected to the transfer. Prior to the transfer taking place, both the transferee and the outgoing employer (transferor) are under an obligation to inform and consult with the transferring employees or their representatives.

If an employee has an outstanding claim or potential claim against his or her old employer, the liability for this will transfer to the new employer.

Employee Liability Information

The transferor must provide what is known as “employee liability information” to the transferee ahead of the transfer taking place. The employee liability information contains details about the employees who are eligible to transfer and gives details of their main terms and conditions of employment. The employee liability information must be accurate and it must be provided. If a transferor fails to provide the employee liability information the transferee will be entitled to bring legal action against the transferor in respect of such.

Measures

If, following receipt of the employee liability information the transferee considers that it wishes to make changes to the terms and conditions or, working practices of any of the transferring staff then it must notify the transferor of these proposed “measures”. Both the transferee and the transferor must then inform and consult with the employees or their representatives about such measures pre-transfer. A failure to inform and consult will entitle the affected employees to bring claims against both the transferor and the transferee for up to 13 weeks’ actual pay.

Changing terms and conditions of employment

A transferee can only make changes to an employee’s terms and conditions of employment post-transfer in exceptional circumstances. A transferee can only make changes if it possesses an economical, technical or, organisational (“ETO”) reason which entails changes in the workforce, for such.

Objection

Neither a transferee nor, a transferor can prevent an eligible employee from transferring under TUPE but an employee can themselves elect not to transfer by objecting to the same. Notice of objection can be given to transferee, transferor or, both.

