

EMPLOYMENT RIGHTS ON BUSINESS TRANSFER

TUPE Regulations

Employees enjoy certain rights under European law, on the transfer of business. "TUPE" refers to the Transfers of Undertakings Protection of Employment Regulations which give effect to these rights in England and Wales. There are similar regulations in force in Ireland.

The TUPE regulations apply where any business or economic activity is transferred from one business to another. The TUPE regulations apply equally to transfers of large and small businesses, public and private undertakings. The TUPE regulations do not apply to the transfer of shares in a company or to transfer of business assets only. They apply where there is a transfer of a distinct business with employees.

Where the TUPE regulations apply, the rights and entitlements of the employees will transfer automatically on the transfer of a business. The rights which employees hold under their employment contract with the vendor/seller will continue to apply when the buyer becomes the employer. Rights arising by reason of continuity of service are preserved. Periods of service accumulated with the old employer count with the new employer. The buyer takes over responsibility with outstanding disciplinary grievances, tribunal claims and collective agreements.

There is no obligation on the new employer to offer transferred employees who are members of an occupational pension scheme, the same pension rights. However they must be offered a certain minimum level of pension provision. An employee can opt to take a occupational pension scheme or stakeholder pension scheme. If a stakeholder's contribution scheme, is chosen the employer will have to match the employee contribution up to 6%.

If employees' terms and conditions are changed by reason of the transfer, then this could amount to a breach of contract. If the change is unconnected with the transfer it should be treated like any other change i.e. undertaken by negotiation and by agreement.

If an employee refuses to transfer, he or she is not regarded as dismissed but is deemed to have resigned and not be entitled to redundancy. An employee who was employed immediately before the transfer who is dismissed may bring a tribunal claim for unfair dismissal against the previous or the new employer provided he has at least one continuous year employment. The dismissal of an employee after a transfer by reason only of the transfer itself or something connected with it, is deemed unfair.

A dismissal may be fair if it is genuinely based on economic, technical or organisational reasons entailing changes in the workforce. If there are such genuine reasons, the dismissal is potentially fair. The dismissing employee must follow fair procedure. There must be a genuine redundancy situation.

Notification to Employees

There is an obligation to give employees details of action that is intended to be taken in order to give effect to the transfer. Employers must inform representatives of the employees affected by the transfer. The appropriate representatives may be either a recognised trade union representative or employee's representative appointed by the affected employees for the purpose of consultation

The representatives must be informed of the transfer itself, where and when it will happen, the legal and social economic implications, and the measures the employer envisages will be taken in relation to affected employees (e.g. redundancies, relocation, change of terms or other measures).

The representatives have a right of access to affected employees, to facilities to carry out their duty and to time off in connection with the duty. Affected employees may not

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necessarily be those who are transferring and can also include employees who are affected indirectly only.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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