

LORETTO THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE) POLICY		No. 40
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Introduction

Loretto is committed both to consulting with employees on the effects of change on them and supporting employees in dealing with any consequences of change.

The purpose of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is for employment protection, in situations where employees would otherwise be redundant because a business or undertaking is transferred to a new employer, or there is a 'service provision change'.

When Does TUPE Apply?

TUPE applies in two situations, firstly:

- Where a business is bought and will continue
- Where a business otherwise transfers and will continue
- Where a business passes between group companies in a re-organisation

Secondly:

- Where a service is contracted-out or outsourced
- Where an outsourced service passes to a new contractor
- Where an outsourced service comes in-house
- Where activities cease to be carried-out by a client are carried out instead by a contractor
- Activities cease to be carried-out by one contractor and pass to another contractor
- Activities which have been contracted-out are taken back in-house by a client
- The client intends that those activities will, following the service provision change, be carried out by the new employer

Managing Employees through a TUPE transfer

When a transfer proposal is seriously being considered the current employer should communicate directly with its employees and in addition any recognised trade union or appropriate employee representatives.

Employees will be given the opportunity to:

- Ask questions
- Put forward their views on the proposal
- Outline alternatives and receive a response
- Give views about information needs and frequency of future briefings, with the current employer agreeing to meet those needs.

Employees should be told:

- What is happening and why
- The primary aim being to protect terms and conditions
- About their rights in a transfer situation
- About formal consultation with the union or appropriate employee representatives
- About the sequence of events that are likely to follow
- That they will be kept fully up-to-date
- That anyone with major, personal concerns will be seen on an individual basis by “advisors”, identified to employees at the first briefing. Any conversations will be confidential.

Another briefing should occur after consultation with any recognised union or appropriate employee representatives has ended.

In line with good practice the proposed new employer should join the current employer at the briefing to tell employees:

- That consultation has taken place with the union or appropriate employee representatives
- Exactly what is happening and why
- The transfer date
- General details about the proposed new employer’s organisation
- The primary aim being to protect terms and conditions
- How each of their current terms, conditions and benefits will be treated.
- That any discretionary terms and conditions will not transfer across.
- About union recognition arrangements with the new employer
- Whether any redundancies are proposed post-transfer
- The situation regarding pension rights, where applicable, what alternative pension arrangements the new employer can offer and special sessions will be arranged for pension advice as they are leaving their old employer’s scheme.
- That they have the legal right to object to being transferred and consequences explained. Anyone wishing to object either now or in the future will be seen on an individual basis by “advisors”, identified to employees at the first briefing. Any conversations will be confidential.

- That anyone who has concerns of any nature will be seen on an individual basis by “advisors”, identified to employees at the first briefing. Any conversations will be confidential.
- How they will be integrated into the new employer’s business
- That they will receive a letter confirming that the transfer is going ahead

Employees should be given the opportunity to:

- Ask as many questions as they want and receive honest answers
- Give their views about their needs between now and the transfer, with the current and the new employer agreeing to meet these needs.

Which employees transfer?

At the exact point when the transfer takes place all employees who have a contract of employment, are mainly employed spending the majority of their time working in the business and are permanently assigned would transfer to the new employer.

Employee Data

TUPE requires that the new employer is provided with specific details about the new workforce in advance of any transfer or change in service provision.

TUPE requires that the following information, known as ‘employee liability information’ must be given to the new employer not less than 28 days before the transfer takes place.

- The identity and age of those employees who will transfer.
- Information contained in their 'statements of employment particulars', such as a written statement of pay, hours of work, holidays and so on.
- Information about any relevant collective agreements.
- Details of any disciplinary action taken against an employee in the last two years.
- Details of any grievance action raised by an employee in the last two years.
- Details of any legal action (court or employment tribunal) brought against the employer by an employee in the last two years and information about any potential legal action.

The Data Protection Act 1998 covers the legal requirement to release personal data. The Act allows this disclosure because it is required by law. Both parties will take care to comply with data protection principles when handling personal information. The current employer should make sure that the information is accurate, up to date and secure. The new employer will use the information only

for the purposes of TUPE, such as assessing possible liabilities or planning how employees are going to be adopted into the business.

Objecting

Employees have a legal right to object to transferring. If an employee wishes to object they must do so in writing and must be absolutely clear that they are objecting on the basis that they do not want, under any circumstances, to work for the new employer. In this case there is no dismissal in law and the employee's contract will come to an end automatically by operation of the law. The current employer will confirm in writing to the employee that their contract will automatically come to an end at the date of transfer, clearly stating that they have exercised their legal right to object to being transferred under the Regulations.

Documentation

The previous employer provides the new employer with all the transferring employees HR files at the date of transfer.

Under TUPE the new employer is required to check identification documentation for each individual within 28 days of the transfer date. This documentation confirms that the employee has current and valid permission to be in the UK, and that permission does not prevent him/her from being employed within the organisation. Under The Immigration, Asylum and Nationality Act 2006, it is a criminal offence to employ a person aged 16 years or over, who is subject to immigration control, unless the person has current and valid permission to be in the UK and that permission does not prevent him/her from taking the job in question.

Other documentation that the new employer is required to check is Disclosure, SSSC and nursing registration confirming that employee's documents and registration are up-to-date.

Current and New Employer's position in a transfer

- The current and new employer has joint responsibility to communicate, inform and consult with employees and representatives
- The new employer must honour employee's contractual rights
- The current employer is obliged to provide employee data (employer liability information) to the new employer
- The current employer must provide detailed information to the new employer about employment structure, all terms and conditions and benefits of employees transferring including those that are custom and practice, any discretionary payments/benefits which are not contractual,

- occupational pension schemes, union recognition, the terms of any collective agreements and current negotiations, any workforce agreements which apply, employment liabilities e.g. Tribunals
- The current employer will provide employees with formal written confirmation of details of the transfer
 - The new employer will issue a formal letter of welcome within 4 weeks of the transfer date to all employees who transferred confirming the name of new employer and that their continuous service period will remain the same.

Employee's position in a transfer

- All employees who are affected by a transfer are entitled to information and consultation with representatives
- Employees will transfer on their existing terms and conditions, except that ongoing pension rights change
- Employees have continuity of service
- Employees have some protection against "unfair dismissal"

Terms and Conditions

Under TUPE the new employer can agree variations to terms and conditions if:

- The employee agrees; and
- The variation is not made because of the transfer itself but for a reason connected with the transfer
- And that the reason is an economic, technical or organisational reason
- And it entails "changes in the workforce" (a change in the number and/or functions of the employees)

Pension

Under TUPE a replacement pension scheme will be offered by the new employer if the previous employer provided an occupational pension scheme with employer contributions. The new employer must match contributions by employees up to 6% of their basic pay.

Absent Employees

Where TUPE applies, an employee still transfers to the new employer even if they are absent at the time of the transfer and were omitted from the list of transferring employees.

Integrating Transferring Employees

It is crucial for the smooth transition and integration of transferring employees into a new organisation that:

- Individual roles and responsibilities are clarified
- Assistance and support is available from HR and the employee counselling service to help employees cope with change.
- Employees are able to identify with the core values and mission statement of the new organisation.
- Expectations of both management and employees are fully discussed.
- Communication is open and employees receive fair treatment, respect, commitment and trust
- Employees attend the organisation's induction
- Employees are given access to relevant organisational and statutory training opportunities