

# burton & dyson

SOLICITORS



## Guide to TUPE

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A guide by Burton & Dyson



# Introduction

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**When a new owner takes over a business, employees' terms and conditions of employment are protected under what is usually referred to as TUPE – the Transfer of Undertakings (Protection of Employment) Regulations.**

Their employment contracts, continuity of service and any other rights continue under the new employer as if they were still working for their old employer.

Employers need to be aware of their responsibilities under TUPE. Failure to follow the correct procedures can have serious consequences. For example, if a new employer refuses to meet the terms of the old employer's contract, this will amount to a breach of contract and could lead to an employment tribunal.

This guide is designed to highlight some of the key points arising from TUPE. However, this is a complex issue and if you are involved in a TUPE arrangement, it is essential to seek expert legal advice to ensure that you fulfil your responsibilities and remain legally compliant.

## When does TUPE apply?

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TUPE applies where what is defined as a “stable economic entity” is transferred from one business to another and retains its identity following the transfer.

Broadly speaking, TUPE regulations must be followed in:

- mergers
- sales of businesses by sale of assets
- a change of licensee or franchisee
- the gift of a business through the execution of a will
- contracting out of services
- changing contractors
- where all or part of a sole trader's business or partnership is sold or transferred

It does not apply where there is a:

- transfer by share takeover
- transfer of assets only, e.g. equipment
- transfer of undertakings outside the UK (although similar provisions apply in the European Union)
- change of business identity, for example, if the nature of the business or its organisational structure changes significantly

## Buying a business

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Under TUPE, if you are buying a business you must inform and consult representatives of any existing staff who may be affected by the transfer and tell the person you are buying the business from about anything you plan to do that will affect transferring employees. This must happen before the transfer takes place and with sufficient time for consultation.

Employees transferring to your employment when you buy all or part of a business do so on their existing terms and conditions and with their continuous employment protected. This also applies to employees who transferred previously to the business you are buying.



The protected rights of transferred employees also include pensions. If their previous employer provided membership of an occupational pension scheme (i.e. salary-related or money purchase arrangement), then you will also have to provide some form of pension for them. You do not have to provide exactly the same pension scheme as previously provided, but the scheme must meet a certain minimum standard.

If you wish to make changes to the transferred employees' terms and conditions, and the change is not connected to the transfer, you can follow the same process as you would for any other change. However, a change to transferred employees' terms and conditions that is due to the transfer or related to it may result in a breach of contract, which could lead to employees resigning and give grounds for claims of unfair dismissal.

Any ongoing disciplinary and grievance situations or employment tribunal claims and collective agreements also transfer to you.

## Selling a business

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If you are selling a business, you must give the buyer written information about the employees who are to transfer and the new employer's rights and obligations towards them. This information includes the identity and age of the employees who will transfer, details of their written particulars of employment and details of any claims that you reasonably believe might be brought.

TUPE also requires you to inform and consult representatives of employees affected by the transfer, as early as possible. The consultation must include employees who will not move across to the new owner but may also be affected.

If you fail to carry out consultation, you may be liable to pay compensation of up to 13 weeks' pay.

Employees have the right to refuse to transfer with the business. If they do so, they are regarded as having resigned and will not be entitled to statutory redundancy pay.

## Other issues

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The acquisition of a business is often designed to increase business efficiency and reduce overheads, so the transaction may lead to restructuring of the organisation and redundancies.

For further information on these issues, please see our separate guide to redundancy and restructuring.

## Conclusion

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TUPE is a complex area so it is essential to seek legal advice for individual circumstances. Where a business, or part of one, is being transferred, both parties (i.e. the transferor and the transferee) should seek such advice at the earliest possible stage.

**To find out more about how we can help you, please contact us:**

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