

What is TUPE?

TUPE is a technical term that stands for "**Transfer of Undertakings (Protection of Employment) Regulations 2006**". That sounds complicated, but it's basically a set of rules that apply to organisations of all sizes when employees are transferred to a new employer. Most importantly, they protect employee rights. In particular it protects the terms and conditions of their existing contract and makes sure they are no worse off due to their job being transferred under a new employer.

When does TUPE cover me?

TUPE applies in the following situations;

- If a business - or part of a business – is either taken over by or merged with another business.
- A new contractor takes over activities from another contractor (this is known as re-tendering).

What does TUPE mean legally?

If your job is being transferred to the new employer, it means that they are taken on the existing terms of your contract with your current employer: these terms are protected.

You can refuse to transfer (or "object"), but depending on the circumstances of the case, you can lose valuable legal rights if they do.

Once you've transferred to the new employer, TUPE makes sure you still have the same rights under the contract of employment, statutory rights and continuity of employment as in your previous job.

You therefore have the legal right to transfer to the new employer on their existing terms and conditions of employment and with all their existing employment rights and liabilities intact. Basically, the new employer is treated as if they have always been your employer, and has the same responsibilities to you in terms of things like pensionable service, salary, holidays etc.

Can they dismiss me because of the transfer?

Any dismissals where the only (or main) reason is the transfer will be automatically considered unfair.

However if they say there is an **ETO** (economical, technical or organisational) reason that means that they need to reduce staff numbers or change job roles, they may have a case to dismiss you.

Under some recent changes to TUPE law, dismissing an employee because of a change in the location of the job is now considered to be an **ETO** reason, but they still need to be handled as part of a fair process.

My new employer recognises a different one than my old employer?

TUPE means that if your previous employer recognised your union, then the new employer has to recognise them too.

Terms and conditions under TUPE

When TUPE applies, you will automatically become employees of the new employer. Your continuous service transfers with you, and you will have the same terms and conditions of employment with your new employer.

Following a transfer, it's common to find that there are people working in the same roles side by side with different terms and conditions: this can mean they have different leave entitlements and even different salaries. Employers often use this as a reason to try to 'harmonise' contracts, which means changing them all to the same thing.

However, TUPE stops employers from 'harmonising' contracts if the only or main reason for the change is the transfer. This protection doesn't have an expiry date: you always have it.

What does my employer need to do?

Your old employer must consult with you about the changes that the transfer will cause. This can be through the trade union, or through elected 'employee representatives'.

The information must be given in writing and include:

- the fact that the transfer is going to take place, approximately when and why.
- any social, legal or economic implications for the affected employees for example a change in location or risk of redundancies.
- any measures that the outgoing and incoming employers expect to take in respect of their own employees (even if this is nothing).
- the number of agency workers employed, the departments they are working in and the type of work they are doing if agency workers are used.
- the outgoing employer must provide information about any measures which the incoming employer is considering taking in respect of affected employees.

Businesses with less than 10 employees are not required to go through elected 'employee representatives' or trade unions. Instead, they must inform and consult directly with each individual employee regarding the transfer.

Do they pass my details to the new employer, or do I do it?

Your employer will need to provide the following information to the new employer at least two weeks before the transfer happens: this is called **Employee Liability Information**.

- the identity and age of the employees who will transfer

- information contained in the written statement of those employees
- details of any disciplinary action taken against an employee in the last two years
- details of grievances raised by an employee in the last two years
- instances of legal actions taken by employees against the old employer in the last two years
- information regarding any collective agreements

What if my old employer is becoming insolvent?

TUPE is relaxed a bit when the old employer is closing down due to financial or commercial reasons. This means that your old terms and conditions aren't protected so well, but the reason for this is that new companies will be more likely to rescue failing companies if they don't have to worry about matching all the employees old contract terms exactly.

What about collective agreements?

Collective agreements (sometimes called collective bargaining) are things that may have arisen at your previous employer, and mean that the employees got together and negotiated some general change to everyone's written terms and conditions. These agreements often include things like training for union representatives, job security arrangements and flexible working arrangements.

Collective agreements in place at the time of the transfer also transfer to the incoming employer. Terms and conditions from collective agreements may be renegotiated after one year provided that overall the contract is no less favourable to the employee.