

CLOVER HR

# EMPLOYER GUIDE UNDERSTANDING TUPE

### UNDERSTANDING TUPE



**TUPE** is the Transfer of Undertakings (Protection of Employment) Regulations and its purpose is to protect employees if the business in which they are employed changes hands.

**TUPE** applies to employees who are employed by businesses in the UK. The size of the business does not matter under TUPE, but the part of the business that is changing ownership must be in the UK.

### **Under TUPE:**

- An employees job normally transfers over to the new company, unless the employee is made redundant or the business is insolvent.
- Terms and conditions of employment transfer over (Note: There are special rules regarding pensions)
- Collective agreements in place before the date of the transfer will apply.
- Continuity of their employment is maintained.

There are two types of transfer that is protected under TUPE: These are **Business Transfers** and **Service Provision Changes** 

#### **BUSINESS TRANSFERS**

This is where part of a business or the whole business moves from one employer to another employer. This process can include mergers between 2 companies to create a new company. The employer's identity must change for it to be protected under TUPE.

### SERVICE PROVISION CHANGES

### This is when:

- A Service that is provided in-house is awarded to a contractor
- A contract ends and is then given to another contractor
- A contract ends and the work is then transferred in-house by the former customer

**NOTE**: Employees are not protected under TUPE if the contract is for the supply of goods for the company's use or for a single event or short-term task such as catering for a large event.

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### **CONSULTING AND INFORMING**

It is important to follow a well-planned process when dealing with TUPE- following any requirements for consultation and/or communication.

Before a transfer of ownership happens, employers must tell the trade union or employee representatives:

- that the transfer is happening, when it's happening and why
- how the transfer will affect them
- whether there'll be any reorganisation

Employers can be penalised if they don't do this



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# WHAT IF AN EMPLOYEE DOESN'T WANT TO WORK FOR THE NEW EMPLOYER?

Employees can refuse to work for the new employer. This is the same as resigning - they won't normally be able to claim unfair dismissal or redundancy pay.

Notice isn't required. The employee simply tells the employer, or the new employer, before the transfer happens. Employment then ends at the time of transfer.

**NOTE**: If an employee's working conditions are significantly worse because of the transfer, they can object to the transfer, or resign and claim unfair dismissal.

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### **AFTER THE TRANSFER**

The new employer can't change an employee's terms and conditions if the reason is the transfer itself.

**NOTE**: The new employer can change an employee's terms and conditions if the reason is an 'economic, technical or organisational reason' (ETO) involving changes in the workforce or workplace, such as a result of redundancies or a move from a managerial to a non-managerial position.

The employee needs to agree to this change.

'Economic' reasons are to do with how the company is performing.

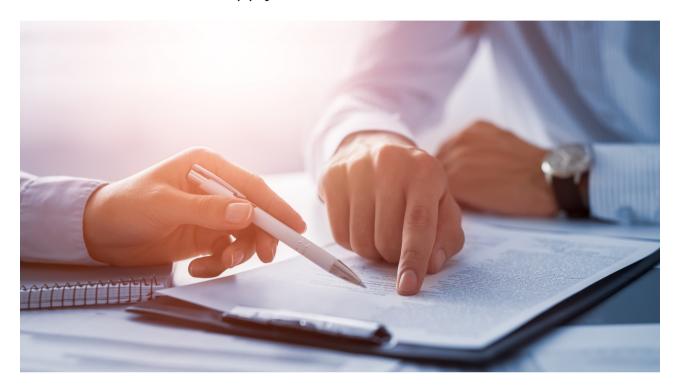
'Technical' reasons are to do with the equipment or processes the company uses.

'Organisational' reasons are to do with the structure of the company.

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### **DISMISSALS**

Employers can dismiss employees for an ETO reason involving changes in the workforce, eg redundancies. The normal rules around fair dismissals will still apply.



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### **GOOD PRACTICE**

When the transfer is complete, employees should make sure they get an up-to-date written statement of employment, giving the name of the new employer and saying that their terms and conditions haven't changed.

For further advice on TUPE and its many implications please contact CloverHR.

