

TUPE transfer – consultation requirements

If you are in negotiations to buy or sell the whole or part of a business, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will impose duties upon you to inform and consult with employees if there is a 'relevant transfer'.

What is a relevant transfer?

A relevant transfer occurs where:

- an economic entity (an organised grouping of employees and assets) is transferred from one business to another as a going concern
- a client contracts out part of its service provision and then reassigns the contract or brings the work back in-house

However it will not be a relevant transfer if:

- the transfer is by share transfer. The company is a separate legal identity and continues in its ownership of the assets and employment of the employees.
- only assets are transferred and employees are not affected
- a business transfers from the public to the private sector
- services contracted out were on a one-off basis, not an on-going contractual relationship

What happens if there is a relevant transfer?

As well as other duties not covered by this leaflet, TUPE imposes duties upon both the seller and the buyer to inform and consult employees affected by the transfer.

'Affected employees' include every employee who may be affected by the transfer, not just those who will actually transfer. And this includes not only the employees of the seller's business but those in the buyer's business as well.

If the number of affected employees is small it may be most effective to inform and consult on an individual basis. However, for larger numbers you can deal with either:

- representatives of a recognised trade union; or
- employee representatives appointed by the affected employees



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What information must I give?

Whether dealing with individual employees or representatives you must disseminate the following information:

- that a transfer is to take place, approximately when, and why
- the legal, economic and social implications of the transfer for the affected employees
- whether the seller is envisaging any changes in relation to the affected employees, e.g. restructuring, relocation, redundancies or changes to terms and conditions
- whether the buyer is envisaging any changes in relation to the affected employees

When must the information be given?

The purpose of giving the information is so that consultation can take place with a view to seeking agreement over the arrangements for the transfer. Therefore the information must be given long enough before the transfer to allow reasonable time for consultation to take place. What is reasonable will depend on the circumstances of the transfer.

Do I have to give information to anybody else?

If you are the seller you must provide the buyer with the following information relating to the transferring employees:

- names and ages
- statements of employment particulars
- details of any disciplinary action taken or employee grievances raised in the past two years
- details of any legal actions against you by the transferring employees in the past two years
- details of any collective agreements that apply

If you are the buyer you must provide the seller with details of any changes you intend to make after the transfer that will affect the transferring employees.

This is just a very brief summary of the consultation requirements under TUPE. If you think you are entering into a relevant transfer you should seek further, more detailed advice at www.gardandco.com.

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