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Buying or selling a business? Ignore staff rights at your peril

When buying and selling businesses, owners frequently overlook their legal responsibilities towards employees.

Employer's obligations towards staff are contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006 also known as TUPE. TUPE not only offers protection for employees in a transfer of a business as a going concern but can also apply to employees in other circumstances e.g. where another business takes over a particular contract which a number of employees were working on.

The effect of TUPE is that the buyer of a business 'steps into the shoes' of the seller. As far as the employee is concerned it is as if they have always been employed by the buyer and their rights and any outstanding claims against the employer remain intact.

TUPE therefore impacts on a sale in number of ways:

- the buyer needs to insure that the contract for the purchase of the business contains suitable protection for the buyer against any outstanding claims by employees, for instance those relating to personal injury or discrimination
- the buyer of a business may wish to change the terms of employment of one or more employees. Since TUPE provides for the same terms to apply after as before the transfer, careful steps will need to be taken to avoid a claim from an employee.
- TUPE also includes a duty to inform, and in certain instances, to consult employees about a proposed business sale. The onus to do this falls on the seller and buyer equally and if it is not done both could face a claim for compensation. There are a number of issues to consider here:
 - whilst consultation should take place with recognised trade unions or elected employee representatives, consultation with employees on an individual basis would be more appropriate for small businesses.

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- employees need to be informed, for example, of the reason for a proposed sale and what the buyer's proposals are for the work force. This information must be given a sufficient time in advance of a sale to allow consultation to take place.
- whilst an employment tribunal may take account of special circumstances it will not always regard commercial confidentiality as a valid reason for failure to properly consult. This is on the basis that a longer period between agreement to the sale and the date of completion of a sale could have been negotiated to allow consultation to take place once both buyer and seller were legally committed.

Accordingly, business owners wishing to sell, ignore rights of their employees at their peril. Since the wrong approach to employees could be costly specialist legal advice is recommended well in advance of any business sale.

To make sure contact Steven, Tom or Philip who will be happy to provide advice or visit www.gardandco.com.

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