



TUPE and Redundancy

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) are designed to protect employee's rights on the transfer of an undertaking.

TUPE is a complex subject and a full explanation of its many elements is beyond the scope of this short factsheet. Any person who requires further information on TUPE should get in touch with their regional office.

TUPE, in simple terms, provides that where there is a service provision change or change of undertaking from person A to person B, individuals who were employed by A 'immediately before the transfer' automatically become employees of B from the time of the transfer, on the same terms and conditions as they previously held with their old employer – A.

Therefore, as a result of the operation of TUPE, an employee who is assigned from employer A to employer B will not have their contract terminated. It naturally follows that they will not be entitled to a redundancy payment on transfer. TUPE does allow an employee to refuse to transfer their employment but if an employee elects to take this option they may not get a redundancy payment (employees should seek advice on this issue before making any election not to transfer their employment).

Therefore, if an employee transfers their employment, they will not be entitled to a redundancy payment.

However, there are some occasions, where a redundancy payment will be made. We have seen examples of where an employer seeks to dismiss employees, by reason of redundancy, prior to the transfer taking effect. The TUPE Regulations are clearly designed with the specific purpose of protecting employees on transfer and any employer which wishes to dismiss prior to a transfer must ensure that proper process is followed and that the dismissal is not simply designed to avoid a TUPE transfer from taking effect.

If it is a genuine redundancy and the proper process has been followed an employee will be entitled to a redundancy payment in two circumstances involving TUPE:

1. If the employee is dismissed by the transferor in advance of the transfer because of the fact that the transferor is to go out of business in the place where the employee is employed or because the work is genuinely not required anymore (note the need that the requirement be genuine and not a sham designed to avoid the impact of TUPE); or
2. following the transfer, the transferee dismisses the employee because the business is closing or because the work is no longer required.

It is important to analyse proposed redundancies in circumstances where a TUPE transfer is imminent so as to ensure that an employer is not seeking to make redundancies, or dismiss employees generally, to avoid the obligations which arise under TUPE to protect employee's terms and conditions.