

TUPE Regulations - when do they apply?

The Transfer of Undertakings (Protection of Employment) Regulations - known as "TUPE" - have been in force in various forms for over 30 years. Despite this, the law is still developing through case law.

TUPE stems from a European directive and is intended to protect employees' rights where the business in which they work is transferred; and any attempt to avoid it will be void.

Gill Wilkinson explains when TUPE applies, although some of these rules are relaxed where the business is insolvent and specialist advice should always be taken in this situation.

TUPE applies to company asset sales where the whole or part of a business is transferred to a new owner. It does not apply to company share sales, where the identity of the employer stays the same.

TUPE also applies to service provision changes, where an organisation engages a contractor to carry out a service for it, reassigns the contract to another contractor or brings the work back in-house. This is often referred to as contracting-out, second generation contracting-out and contracting-in.

Ware & Kay LLP in YORK



Address
Sentinel House
Peasholme Green
York, YO1 7PP



Tel
01904 716 000
Fax
01904 716 100

Where TUPE applies, all employees who are assigned to the undertaking immediately before completion are protected against dismissal in connection with the TUPE transfer and will transfer automatically to the new owner or contractor, on their existing terms and conditions of employment, including pay. There is no break in their continuous employment. This means that the new owner or contractor effectively steps into the shoes of the old one and inherits all of its rights, obligations and liabilities with respect to the staff.

Employees can object to the transfer. If this happens, they do not move to the new owner but their contracts come to an end on the transfer date without them being dismissed, which means they have no right to notice, a redundancy payment or any compensation. Famously, some of Rangers Football Club's professional players have recently done just that and are free to join other clubs as a result.

Ware & Kay LLP

good on paper, even better in person

Contact us

Ware & Kay's specialist, Gill Wilkinson, has extensive experience in all aspects of employment law. Contact her on 01904 716000 or gillian.wilkinson@warekay.co.uk.

Ware & Kay LLP in WETHERBY



Address
The Aire Suite
Brunswick Court
Victoria Street
Wetherby, LS22 6RE



Tel
01937 583 210
Fax
01937 587 556