

TUPE Pitfalls

Last month, Gill Wilkinson explained when the TUPE rules apply. This month, Gill highlights a couple of mistakes for employers to avoid in a TUPE situation.

Changing terms of employment

Any changes made by the new employer to terms of employment will be void, if the reason for the change is the transfer or a reason connected with it. This makes it very difficult to harmonise terms and conditions of employment. If changes are made to an employee's contract that are to his detriment, he can resign and claim constructive dismissal.

Automatic unfair dismissal

Any dismissal of an employee with the necessary qualifying period of service (which is one or two years, depending on when he started work), will be automatically unfair if the reason for the dismissal was the transfer or a reason connected with it. There is a defence in limited circumstances, but employers need to tread carefully, as it is easy to get it wrong.

Obligation to inform and consult

Both old and new employers need to give prescribed information about

Ware & Kay LLP in YORK



Address
Sentinel House
Peasholme Green
York, YO1 7PP



Tel
01904 716 000
Fax
01904 716 100

the transfer and its implications to trade union representatives, or representatives elected by the employees if there is no recognised union. If an employer intends to take any “measures” in connection with the transfer, which broadly means any changes that may affect the employees, it must also consult with the representatives with a view to seeking their agreement. A failure to inform or consult can be very expensive, as an employment tribunal can award up to 13 weeks’ actual pay for each affected employee.

Employee liability information

The old employer must provide the new employer with certain information about the employees at least 14 days before the transfer date. A failure to do so gives the new employer the right to bring a claim in the employment tribunal for a minimum of £500 per employee.

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