TUPE

1 . What a TUPE transfer is

TUPE regulations protect employees' rights when they transfer to a new employer.

TUPE stands for Transfer of Undertakings (Protection of Employment).

A TUPE transfer is when there's either:

- a business transfer
- a service provider change

A business transfer is when an organisation, or part of it, is transferred from one employer to another.

A service provider change is when a service is transferred to a new provider. For example, when another company takes over a contract for office cleaning.

The part of the organisation that's transferring must be in the UK for TUPE to apply.

The size of the organisation does not matter. For example, it could be a large organisation with many employees, or a small business with one employee.

TUPE regulations can apply to the public and private sectors, as well as charities.

Who TUPE regulations apply to

When there's a transfer, employers must follow TUPE regulations. This includes:

- the old employer – the employer making the transfer
- the new employer – the employer taking on the transfer

TUPE regulations protect anyone who is legally classed as an employee.

TUPE regulations might also protect someone who is legally classed as a worker. If you're not sure whether someone is protected, you should get legal advice as this is a complex area.

TUPE regulations do not protect agency workers.

Which employees transfer

All employees assigned to the business, or part of the business, that's transferring will automatically transfer with it.

An employer cannot choose which employees they want to transfer.

Business transfers

A business transfer is where a business or part of a business moves from one employer to another.

TUPE applies to a business transfer when all of the following apply:

- the employer changes
- its main assets transfer to a new employer
- business activities are the same as or similar to before the transfer

Assets can include:

- employees
- equipment
- business premises
- any work in progress
- goodwill, for example the business reputation or customer base
- intellectual property, for example copyrights or trademarks

Business transfers can include:

- mergers – where 2 businesses come together to form a new one
- businesses that have just one employee

TUPE is not likely to apply if it's a transfer of shares or equipment only.

Service provider changes

A service provider change is where contracts are taken over. This can be because of:

- 'outsourcing' – a service provided in-house is taken over by a contractor
- 'insourcing' – a contract ends and the work is transferred in-house
- 'retendering' – a contract ends and is taken over by a new contractor

TUPE applies to a service provider change when there's an 'organised grouping of employees'.

Service provider changes often include contracts for:

- catering
- security
- office cleaning
- waste collection
- machinery maintenance

TUPE does not apply if the contract is for:

- the supply of goods only, for example a car manufacturer getting their brake pads from a different supplier
- a single event or short-term task, for example a conference or an exhibition

Organised grouping of employees

For TUPE to apply to a service provider change, employees must be part of an 'organised grouping of employees'.

This is the group of employees carrying out work for the 'client'. The client is the organisation receiving the services.

There's no minimum grouping size. A grouping can have one employee.

The client must stay the same after the transfer. The work should stay mainly the same.

Example of a service provider change

An organisation called DeskCo contracted out the reception and security of their office to SecureLimited. When the contract ends, they retender the contract to Safeunit.

DeskCo is the client as they are receiving the services. The reception and security staff are part of an organised grouping of employees. This is because they provide services to meet DeskCo's needs. They'll transfer from SecureLimited to Safeunit under TUPE.

TUPE applies because the work and the client, DeskCo, stay the same.

Transferring to more than one employer

Sometimes a single business or service provider is replaced with multiple businesses or service providers. In this situation, employees transfer to more than one employer. TUPE might still apply.

If the work is randomly broken up between businesses or service providers, TUPE is less likely to apply. This is because the work is not staying mainly the same. This is called 'fragmentation'.

This is a complex area of law. If you're in this situation and you're not sure whether TUPE applies, you should get legal advice.

Public sector transfers

TUPE applies to public sector transfers if the transfer is from either:

- the public sector into the private sector
- one public authority to another – for example, from the NHS to a local authority

TUPE does not apply to transfers within the public sector where the employer does not change. For example, transfers within the Civil Service. But employees get protections under the Cabinet Office Statement of Practice (COSOP). Find out more about transfers within the public sector on GOV.UK.

International transfers

TUPE does not always apply to international transfers.

TUPE might apply when:

- an employee works abroad but the organisation is based in the UK
- the purpose of the transfer is to move the organisation, or part of it, abroad – however this could also be a redundancy situation

For service provider changes, TUPE only applies if the organised grouping of employees is based in the UK.

If there's disagreement about whether TUPE applies

The old and new employer might not agree about whether TUPE applies to the situation. This can be confusing for an employee.

An employee in this situation could:

- raise a grievance – this is where they make a formal complaint to their current employer and their potential new employer
- speak to their trade union representative, if they're a member

If they cannot resolve the situation, they might be able to make a claim to an employment tribunal. This is a complex area of law so they should get legal advice.

Get more advice and support

If you have any questions about TUPE transfers, you can contact the Acas helpline.

You can also book Acas training on TUPE transfers.

2. Planning a transfer

There are things you should consider before a potential TUPE transfer if you're either:

- the new employer taking on the transfer
- the old employer making the transfer

Considering things before the transfer can help you:

- work out if you're ready for a TUPE transfer
- plan the transfer better
- keep good working relationships with your employees

As either the old or new employer in a TUPE transfer, you should consider:

- how you'll keep employees informed
- whether you might need to request or provide due diligence information
- making a transfer plan

Keeping staff informed

Employers should keep 'affected employees' informed about any transfer plans.

Affected employees include employees who are:

- transferring from the old employer to the new employer
- staying with the old employer, but their work will be affected by other employees transferring out
- already working for the new employer, but their work will be affected by employees transferring in

By discussing plans with employees early on and considering their views, you're more likely to:

- maintain morale
- understand and reduce any concerns
- build and maintain trust
- keep employees motivated in their work

- listen to ideas and suggestions
- maintain good working relationships

You should think carefully about:

- when is the best time to tell employees about the transfer
- how you'll communicate with them before, during and after the TUPE transfer

If you decide to go through a TUPE transfer, by law you must also inform and consult staff representatives. Find out more about informing and consulting during a TUPE transfer.

Due diligence

Due diligence is a formal appraisal process by the potential new employer.

The aim is to find out as much information as possible about the client, service or organisation and its potential before agreeing to the transfer.

Due diligence is used to:

- assess risk
- confirm if the transfer is possible
- identify employment costs and other liabilities
- decide how much to bid for the contract and if the service can be carried out with the funds available – for service provider changes

Due diligence information can include details like:

- bonus payments
- enhanced or contractual leave or pay, for example parental leave or redundancy pay

Due diligence is voluntary. But an employer is more likely to find a buyer if they provide information.

Warranties and indemnities

The new employer might also ask for warranties and indemnities. These protect their organisation from unexpected costs and liabilities.

Warranties are written statements from the old employer. The statement confirms either:

- the old employer has done something for the new employer
- certain information is correct – for example information about pay and benefits of transferring employees

Indemnities are promises to pay compensation for a type of 'liability'. Liability is something a person is legally responsible for. The new employer might ask for an indemnity from the old employer for employment claims like unfair dismissal.

Other employment checks

The new employer should make sure employees have all necessary employment checks and qualifications. For example, the right to work in the UK or DBS checks.

Find out more about right to work checks on GOV.UK

Data protection

Employers must follow data protection law (UK GDPR) when using, storing and deleting personal data.

Find out more about data protection from the Information Commissioner's Office (ICO)

Making a transfer plan

Both the old and new employers should have a transfer plan and share it with all employees.

A plan can help to:

- reduce concerns employees might have
- make sure you follow the process you set out

You should identify who will manage the transfer. They should have enough time to make, follow and change any plans during the transfer.

It's often best for one person to have this responsibility. This is so there’s a clear point of contact and they can oversee communications.

This person managing the transfer should work on the plan with any trade union or employee representatives. This will help to reassure employees and keep a good working relationship with them.

Use our TUPE transfer plan checklist for the old and new employer

What the new employer should consider

Before you decide to take on a TUPE transfer, you should consider things like:

- the benefits or risks
- how you'll manage the transfer
- how much you may have to bid
- costs, for example staff employment or redundancy costs
- if there's enough work for employees
- how the transfer will affect existing employees
- how to help new employees settle in when they transfer
- whether trade union recognition will transfer
- how to manage employees who might have different terms and conditions
- any changes to working practices you might need to make which relate to the transfer – these are known as 'measures'
- any risk of redundancies after the transfer

Estimate costs

You should consider employment costs before you decide to take on a transfer. For example, costs of:

- buying new equipment
- any new work premises
- wages

Costs will depend on:

- how many employees are transferring to you
- whether they're paid more than existing employees

You should also consider whether you would have too many employees after the transfer. You might need to make redundancies and pay redundancy costs. Find out more about making staff redundancies after a TUPE transfer.

What the old employer should consider

You should consider how a TUPE transfer might affect your employees and how you'll manage the transfer. This includes:

- the benefits or risks of the transfer
- whether there will be enough employees remaining after the transfer
- any 'measures' (changes to working practices) you might need to make which relate to the transfer
- ways you can reassure employees and reduce concerns, for example by sharing any transfer plans
- identifying which employees will transfer

Manage the transfer

You should think about how you'll manage employees throughout the transfer. This includes how you'll:

- keep affected employees motivated about the transfer
- make sure work gets done to the same standard before, during and after the transfer
- keep knowledge and skills with your remaining employees
- manage workload after the transfer

Redundancy before a transfer

Before a TUPE transfer, the old employer cannot make employees redundant if the reason relates to the transfer. For example, the new employer asks them to. This would be unfair dismissal.

The new employer cannot make employees redundant before the transfer.

If 20 or more employees are at risk, a redundancy consultation can start before the transfer. Both the old and new employer must agree to this.

Find out more about TUPE and redundancy

3. Informing and consulting employees

By law, both the old and new employers must inform and consult before a TUPE transfer.

They must inform and consult with affected employees and their representatives.

'Inform' is when the employer tells affected employees or their representatives the facts about the transfer.

'Consult' is when the employer:

- talks and listens to affected employees or their representatives about expected 'measures' – measures are changes that could affect employees
- genuinely considers the views of affected employees or their representatives

Find out more about informing and consulting during TUPE

4. If employees do not want to transfer

If employees do not want to transfer to the new employer, they can refuse.

If an employee refuses to transfer, they cannot usually claim:

- redundancy pay
- unfair dismissal

If an employee does not want to transfer, they must tell their current employer in writing. This could be in a letter or email.

What the employer should do

The employer should write back to the employee to:

- explain what will happen if they decide not to transfer
- make sure they have all the information about the transfer before they make a final decision

The old employer must tell the new employer that the employee will not transfer.

The employer should treat it as if the employee is resigning. They must:

- confirm the employee's notice period and agree a leaving date
- pay any outstanding wages and holiday they've built up but not yet taken when their employment ends

If the employer offers an alternative job

The old employer might offer the employee an alternative job, instead of them leaving or transferring.

If the employee accepts the role and it starts before the transfer date, their length of service continues.

The employer must tell the new employer that the employee will not transfer.

If there's no alternative job

The employee's employment will end on the date of the transfer if either:

- the employer does not offer an alternative job
- the employee does not accept an offer of an alternative job

If the transfer happens before the employee's notice period ends, they do not need to work beyond the transfer date. The employer does not have to pay for the rest of the notice period.

If working conditions would be worse

An employee might be able to end their employment and make a claim for constructive dismissal if:

- after the transfer their working conditions would be substantially worse
- this would be to their 'material detriment'

Working conditions could include:

- conditions in the contract
- physical working conditions
- other conditions such as the place of work

'Material detriment' means it puts someone at a serious disadvantage.

For example, the workplace changes location which makes it difficult or much more expensive for an employee to transfer.

This is a complex area of law. If you're in this situation, you should get legal advice.

5. Employee liability information

By law, the old employer must provide the new employer with specific information about the employees transferring. This is known as 'employee liability information' (ELI).

Employee liability information includes:

- their name
- their age
- their written statement of employment particulars
- any disciplinary and grievance records, or ongoing cases, from the last 2 years
- any collective agreements with a trade union that affect employees' terms and conditions
- any claims employees have made against the old employer in the last 2 years, or the old employer believes they might make when they transfer

When the old employer must provide information

The old employer must give employee liability information to the new employer at least 28 days before the transfer date. But it's a good idea to provide this information as early as possible.

The information must be accurate, up to date and provided in a secure way.

If any employees decide they do not want to transfer, the old employer must:

- update employee liability information as soon as possible
- tell the new employer

Find out more about disclosure of employee information from the Information Commissioner's Office (PDF, 230KB)

Checks before sending information

The old employer should check if:

- they've included all policies which cover terms and conditions not in employment contracts
- any recently agreed changes to terms and conditions are included in employment contracts
- there are any terms and conditions not in writing by checking with a recognised trade union or employee representatives, for example if they were agreed verbally
- any changes to terms and conditions have been agreed for particular employees, for example flexible working arrangements

If information is incorrect or not provided on time

The new employer should check if all employee liability information is provided on time and correct.

The new employer might be able to make a claim to an employment tribunal if:

- the old employer does not give employee liability information to the new employer at least 28 days before the transfer date
- any information is incorrect
- the old employer fails to inform the new employer of any changes to employee liability information

If the claim is successful, the new employer could receive compensation. This could be at least £500 for each employee the old employer gave incorrect or no information for.

Information the new employer must provide

The new employer must tell the old employer about any 'measures' they're thinking of taking after the transfer.

Measures are usually changes to working practices. For example, changes to employees' pay dates or working patterns.

The old employer must inform affected employees about these proposed changes.

Find out more about informing and consulting during TUPE

Other things to agree

It can help for both employers to discuss and agree:

- which employees are in the group to transfer
- the transfer date

Both employers might also want to discuss:

- if the new employer will meet with the transferring employees and their representatives before the transfer
- if transferring employees can visit the new employer's premises to see what it's like

It can be helpful and reassuring for staff if the new employer is available to answer any questions and give information directly. For example, when there are meetings or visits to premises.

Both employers should agree what to say before meetings to avoid misunderstandings.

6. Transferring employees

On the date of the transfer, employees will automatically transfer to the new employer, along with their:

- length of service
- employment contract, including their terms and conditions of employment

This means an employee's start date is the same as it was before the transfer. Their employment contract continues and they do not get a new one.

Informing employees about a change of employer

The new employer must inform the transferred employees in writing that there's been a change of employer.

The new employer should confirm in writing:

- the employer has changed
- the employee's length of service and contractual rights are the same as before the transfer

The new employer might want to add these details to employees' written statement of employment particulars.

The new employer should talk with staff soon after they transfer to:

- keep them informed
- listen to any concerns they have

This will help to reassure employees and help them settle in, as well as build good working relationships.

Which terms and conditions transfer

The new employer should assume all employee terms and conditions transfer unless they get different legal advice.

Employees' terms and conditions of employment might include:

- job title and role
- pay, including any overtime pay
- contractual bonuses
- commission
- sick leave and pay
- holiday leave and pay, including any outstanding holiday pay or any arrangements to carry over holiday from previous leave years
- allowances
- insurance-based benefits
- contractual enhanced redundancy pay
- any terms agreed through collective agreements between an employer and a trade union
- any contractual terms from other sources, for example from a staff handbook or an agreement affecting many employees
- any terms that might not be in an employment contract, for example a lorry driver needing a valid driving licence to work

The new employer must not breach the terms of the transferring employment contract. If they do, an employee might be able to make a claim to an employment tribunal.

Pensions

Any pension an employee has built up to the date of the transfer is protected.

Their pension might transfer to the new employer. This depends on whether they have:

- a personal pension – a pension that employees arrange themselves
- a workplace pension – a pension arranged by the old employer

If they have a personal pension which the old employer was contractually obliged to contribute to, their pension rights will automatically transfer to the new employer. The new employer must pay the same amount into the personal pension as before the transfer.

If they have a workplace pension, it's unlikely to transfer to the new employer. This is because it is exempt from TUPE. The new employer does not have to continue the same pension. But they must provide a reasonable alternative scheme, and match employee contributions up to a maximum of 6%.

Early retirement terms might also transfer to the new employer.

Employers can find more information from The Pensions Regulator.

Employees can find out more about how TUPE affects their pension from MoneyHelper.

Collective bargaining

On the date of the transfer, the new employer becomes responsible for:

- collective bargaining agreements, for example agreed changes to pay and benefits
- collective bargaining arrangements, for example how often meetings take place and who represents employees in negotiations

Collective bargaining agreements are agreements between the old employer and a trade union that affect employees' terms and conditions.

Many collective agreements continue for an indefinite time. For example, if employees' holiday is increased or a shorter working week is agreed, it is likely to continue indefinitely.

Some collective agreements might only cover a specific period. For example, an agreed change to employees' pay might only be for one year.

One year after the transfer, the new employer can renegotiate terms and conditions in collective agreements. However, overall it must not make an employee's employment contract worse.

Trade union recognition

Trade union recognition is when an employer agrees that their employees can be represented collectively by a trade union.

Under TUPE, trade union recognition only transfers to the new employer if the transferring employees keep a separate identity within the new employer's organisation.

For example, ShopCo's security staff has a recognised trade union. ShopCo transfers the security staff to SafeLtd. The staff keep a separate identity to SafeLtd's wider security workforce. This means the trade union for ShopCo's security staff transfers to SafeLtd.

If recognition transfers to the new employer, it will transfer with the same terms as with the old employer.

If the transferring employees do not keep a separate identity, the recognition agreement will end. But the trade union could try and negotiate a new one.

For example, ElectricCo's team of electricians has a recognised trade union. ElectricCo merges with another company to form SparkCo. All the staff transfer and become one workforce. The electricians from ElectricCo do not keep a separate identity so their trade union does not transfer.

Outstanding holiday and pay

On the date of the transfer, the new employer becomes responsible for any outstanding wages or unpaid bonuses.

For example, an employee is transferred to a new employer in January. Their old employer previously paid a performance-related bonus in March. Their new employer is now responsible for paying them the bonus in March every year.

The new employer also becomes responsible for:

- any outstanding holiday
- any arrangements to carry over holiday from previous leave years
- enhanced or contractual holiday — where employees get more than the legal minimum

For example, an employee's holiday year starts on 1 January and ends on 31 December. They have 10 days' holiday left when they transfer on 1 October. Their new employer must allow them to take this holiday before the end of their leave year, if the employee wants to.

The new employer is responsible for these things even if the old employer did not include them in employee liability information.

If employee liability information was missing or inaccurate, the new employer could make a claim to an employment tribunal.

Changing employees' terms and conditions

The new employer must be careful when agreeing changes to transferred employees' terms and conditions. There are things to consider if the main reason for changing an employment contract is the transfer.

Find out more about changing an employment contract after a TUPE transfer

7. After a transfer

After a TUPE transfer, it's good practice for the old and new employer to continue informing and consulting with employees.

There are also things to consider if after a transfer:

- any employees do not want to work for the new employer
- the employer wants to make redundancies

Informing and consulting

Once the transfer has happened, by law employers no longer need to inform and consult employees and representatives. This is unless there are:

- any proposed changes in working practices
- redundancies

However, it's a good idea to continue informing and consulting affected employees. This can help employers to understand employees' concerns and support them as they settle in.

Steps the old employer should take

The old employer should talk regularly with, and listen to, employees to make sure:

- any reorganisation of teams or working practices has been successful

- employees can manage the workload

It's good practice to:

- reassure remaining affected employees through regular meetings and updates
- listen and respond to concerns, and help to maintain performance and quality of work
- check employees are coping well after the transfer
- look at introducing team-building activities and reward schemes to boost morale

Steps the new employer should take

Employees who have transferred to an organisation might have different ways of doing the same job.

To help the transferred employees settle in, the new employer should:

- welcome them to the organisation, including introducing them to any new team members and their line manager
- use the induction process to introduce rules, policies and standards so they know what is expected of them and how things should be done
- hold regular team meetings to integrate any new employees with their line managers and existing staff
- put in writing any changes to their terms and conditions of employment, for example the name and address of their new employer
- check they understand the terms which transferred over with them

The new employer must make sure they have put in place any reasonable adjustments for disabled employees.

It's good practice to:

- listen to employee suggestions and arrange discussions to generate ideas to improve processes – this could help identify and resolve problems early
- make sure line managers support employees while they're adjusting to change
- consider having buddies or mentors for new employees to deal with queries and identify problems quickly

The new employer must inform and consult employees and their representatives if they plan on:

- making any changes to working practices – these are known as 'measures'
- making redundancies

If employees do not want to work for the new employer

If any employees want to leave after transferring to an organisation, they must tell the employer in writing. This could be in a letter or email.

The employer must:

- confirm the notice period and agree a leaving date
- pay the employee any outstanding wages and holiday they've built up but not yet taken when their employment ends

The employee will not usually be entitled to:

- any additional payments, for example redundancy
- claim for unfair dismissal

They might be able to make a claim to an employment tribunal if they were not informed about the transfer before it happened. Find out more about why an employer must consult.

Find out more about:

- resignation
- pay during the notice period

If working conditions are worse

An employee might be able to end their employment and make a claim for constructive dismissal if:

- after the transfer their working conditions are substantially worse
- this is to their material detriment

Working conditions could include:

- conditions in the contract
- physical working conditions
- other conditions such as the place of work

For example, the workplace changes location which makes it difficult or much more expensive for an employee to transfer.

This is a complex area of law. If you're in this situation, you should get legal advice.

Redundancy

After employees have transferred, the new employer can only make redundancies related to the transfer if there is both:

- a genuine redundancy situation
- a need to make changes to the workforce for economic, technical or organistional (ETO) reasons

If the reason for redundancies is not related to the transfer, the employer does not need an ETO reason.

Find out more about:

- TUPE and redundancy
- redundancy

8. Changing a contract after TUPE

After a TUPE transfer, an employer might want to make changes to employees' contracts.

There are things an employer must consider if the main reason for a contract change is the transfer.

If the main reason for a contract change is the transfer

After a TUPE transfer, an employer can only make changes to contracts because of the transfer if one of the following applies:

- they improve employees' terms and conditions – for example increasing their holiday entitlement

- there is an 'economic, technical or organisational' (ETO) reason involving a change in the workforce – for example the organisation needs restructuring
- there's a clause in the contract that allows the employer to make the change

There's no limit on how long TUPE regulations protect employees' terms and conditions.

For example, an employee is transferred to an organisation. 10 years later the employer wants to change their terms and conditions for a reason related to the transfer. By law, the employer can only make the changes if one of the situations above applies.

Economic, technical or organisational (ETO) reasons

By law, an employer can agree with an employee to change an employment contract if:

- there's an 'economic, technical or organisational' (ETO) reason
- that reason involves a change in the workforce

ETO reasons include:

- economic reasons – for example, essential cost-saving requirements
- technical reasons – for example, using new processes or equipment
- organisational reasons – for example, making changes to the structure of an organistion

A change in the workforce could include:

- making redundancies
- restructuring an organisation
- job role changes
- a change in work location

Example – a valid ETO reason for a contract change

PrintsCo is a large printing organisation in Luton. It buys a smaller organisation called MediaLtd in Dunstable. All 27 employees at MediaLtd transfer to PrintsCo.

Most of the technology at PrintsCo is more advanced. The work can now be done by fewer employees. PrintsCo restructures its organisation and makes 5 employees redundant.

After consulting with affected employees, PrintsCo agrees to change their contracts. They can now work from Dunstable or Luton. This is likely to be a valid ETO reason. This is because the new equipment is a technical reason and the redundancies are a change in the workforce.

Example – an invalid ETO reason for a contract change

A college has employees with 6 different sets of terms and conditions because of TUPE transfers. The college wants to give everyone the same terms to make administration easier and cut costs. This is known as 'harmonisation'.

The college dismisses an employee and rehires them on a contract with lower pay. The college does not have a valid ETO reason because the contract changes do not involve a change in the workforce.

Improving terms and conditions to match other employees

Employees who have transferred will probably have different terms and conditions to existing employees.

An employer might want to make terms and conditions the same. They can only do this if it improves employees' terms and conditions.

An employer cannot:

- change terms and conditions to something worse than before – unless they have a valid ETO reason involving a change in the workforce
- say employees will get improved terms and conditions in one area if they accept worse terms and conditions in another area

Transferring employees do not have an automatic right to improved terms and conditions to match existing employees.

Employers should make sure any differences in terms do not treat particular groups of employees unfairly. This could be discrimination
.

If an employer is changing terms and conditions, they must follow the process for changing an employment contract.

Changing terms and conditions in collective agreements

Collective bargaining agreements are agreements between the old employer and a trade union. They affect employees' terms and conditions.

When a TUPE transfer happens, any collective agreements will transfer with the employees.

Collective agreements could include terms and conditions like:

- pay
- working hours
- holiday entitlement

One year after the transfer, an employer can renegotiate terms and conditions in collective agreements. However, this is only if overall it does not make an employee's contract worse.

If the main reason for a contract change is not the transfer

TUPE regulations do not stop an employer from agreeing contract changes not related to the transfer.

There might be valid reasons for agreeing contract changes with employees. For example, if business needs have changed for reasons that do not relate to the transfer.

An employer must agree changes with employees. They must follow the process for changing an employment contract.

Find out more about changing an employment contract

Get more advice and support

If you have any questions about changes to contracts after a TUPE transfer, you can contact the Acas helpline.

Acas also offers:

- tailored support for employers
- training on TUPE transfers

9. If an employer is insolvent

If an organisation cannot pay its debts, it is insolvent.

TUPE regulations protect employees' rights when they transfer to a new employer. This includes transfers when the old employer is insolvent.

In a TUPE transfer, the type of insolvency and when it happened will affect:

- who pays any money owed to employees
- what protections employees have under TUPE

If an organisation – or a part of it – is being rescued and transferred or taken over by a new owner, employees are protected under TUPE.

If an organisation is closing down, employees are not protected under TUPE. This is because there's no transfer.

The employer should appoint an insolvency practitioner (IP). Find out more from The Insolvency Service on GOV.UK.

When an organisation is taken over

If an insolvent organisation is sold and stays in business, their employees automatically transfer to the new employer.

Employees keep their existing terms and conditions. This includes:

- their original start date
- wages
- holiday pay

The new employer or the insolvency practitioner can make changes to employees' terms and conditions. However, only if:

- it helps to protect jobs by keeping the business going
- they consult with a recognised trade union or employee representatives and get their agreement

If employees transfer before insolvency

If the old employer becomes insolvent after the transfer, the new employer must pay any money employees are owed. For example, wages or holiday pay.

Employees cannot claim compensation from the government's Redundancy Payment Service.

If employees transfer after insolvency

If the old employer becomes insolvent before the transfer, the new employer is not liable for money the old employer owes to employees.

Employees can claim some or all of the money they're owed from the Redundancy Payment Service. This includes wages and holiday pay.

To apply, they need a case reference number from the insolvency practitioner.

Find out how to apply to the Redundancy Payment Service on GOV.UK

When an organisation closes down

Employees do not transfer to a new employer if the old employer:

- goes into 'liquidation' and closes down
- becomes bankrupt

Instead, the old employer should make employees redundant.

Employees can claim for some of the money they're owed from the Redundancy Payment Service. This can include:

- statutory redundancy pay
- wages they're owed
- statutory notice pay
- holiday pay

To apply, they need a case reference number from the insolvency practitioner.

Find out how to apply to the Redundancy Payment Service on GOV.UK

More information

Find out more about:

- redundancy
- your rights if your employer is insolvent on GOV.UK