

# TUPE - a guide to the regulations

*TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations, and its purpose is to protect employees if the business in which they are employed changes hands. Its effect is to move employees, and any liabilities associated with them from the old employer to the new employer by operation of law.*

## Purpose

When a business or part of a business is transferred to a new owner, the TUPE Regulations ensure that employees keep their existing terms and conditions of employment. These protections apply automatically—employees do not need to sign a new contract.

Any agreement that tries to reduce or remove the rights provided by TUPE is not legally valid. Employees who were working for the previous employer at the time of the transfer automatically become employees of the new owner, with the same employment terms. It's as if their original contract had always been with the new employer. This means their length of service and employment rights continue without interruption, except for certain occupational pension benefits.

## When TUPE Applies

TUPE applies when a business—or part of a business—is transferred from one employer to another. This includes a wide range of situations, such as:

- The sale or transfer of all or part of a sole trader's business or a partnership.
- One company buying another's assets and continuing to run the business (not just purchasing shares).
- Two companies merging to form a new business.
- A contract to provide services being transferred in a way that involves the transfer of a business or part of it.

These rules apply regardless of the size of the business. Whether it's a large company with



thousands of employees or a small local business like a pub, shop, or garage, TUPE protections apply equally. The Regulations also apply across both the public and private sectors

## When TUPE Does Not Apply

TUPE protections do not apply in the following situations:

- Share sales: If a company's shares are sold to new owners, the business itself hasn't changed hands—so TUPE doesn't apply. The company remains the employer.
- Asset-only sales: Selling equipment or other assets alone doesn't trigger TUPE. However, if a full business (a "going concern") is sold—including assets—then TUPE may apply.
- Service contracts without business transfer: If a contract to supply goods or services is transferred but no part of the business itself moves to the new provider, TUPE does not apply.
- Businesses outside the UK: TUPE only applies to undertakings located within the United Kingdom.



## Employer Responsibilities During a TUPE Transfer

When a business is transferred to a new owner, both the outgoing and incoming employers have specific legal duties under TUPE. These include:

- **Automatic transfer of employees:** The new employer must take on all employees who were working in the business immediately before the transfer. This also includes employees who would have been working there if they hadn't been unfairly dismissed due to the transfer. Employers cannot choose which employees to keep.
- **Transfer of employment rights and obligations:** All rights and responsibilities under the employees' contracts move to the new employer—except for criminal liabilities and certain pension-related obligations (such as benefits for old age, invalidity, or survivors).
- **Collective agreements:** Any collective agreements in place before the transfer also move to the new employer. These can be renegotiated after one year.
- **Protection from unfair dismissal:** Employees cannot be dismissed solely because of the transfer, unless there is a valid economic, technical, or organisational (ETO) reason that involves changes to the workforce. If no such reason exists, the dismissal will be considered unfair.

- **No worsening of terms:** The new employer cannot change an employee's terms and conditions to their disadvantage unless the employment contract allows it.
- **Duty to inform and consult:** Both the previous and new employers must inform and consult with employee representatives about the transfer and its implications.

## Employee Rights During a TUPE Transfer

When a business is transferred to a new owner, employees are protected under TUPE. If an employee believes they were dismissed because of the transfer, they have the right to bring a claim to an employment tribunal.

Similarly, if the transfer results in a significant and negative change to their working conditions, they may choose to resign and claim unfair dismissal. However, this right does not apply simply because the employer has changed—there must be a serious and detrimental change to their terms and conditions.

Dismissals connected to a transfer are considered unfair unless the employer can demonstrate a valid economic, technical, or organisational (ETO) reason involving changes to the workforce. Even if the dismissal is found to be fair, the employee may still be entitled to redundancy pay.





Employees who were working in the business immediately before the transfer—or who would have been, had they not been unfairly dismissed—automatically become employees of the new owner. This happens unless they inform either the old or new employer that they object to the transfer. In such cases, their contract ends due to the transfer, but they are treated as having resigned rather than being dismissed. The previous employer may choose to rehire them, but is not required to do so.

The new employer should issue a revised statement of terms and conditions within four weeks of the transfer. The employee's length of service continues without interruption, and the original start date with the previous employer still applies. This should be clearly stated in the new employment documentation. If there is any disagreement about the start date, the matter can be referred to an employment tribunal.

All existing rights and obligations under the employee's contract transfer to the new employer, except for certain pension-related benefits. If the new employer fails to offer comparable overall terms and conditions, including pension arrangements, the employee may have grounds to claim unfair dismissal.

### **Redundancy and TUPE Transfers**

Employees who are dismissed as part of a TUPE transfer may still be entitled to redundancy payments. Employers must also ensure that they meet the legal requirement to consult with employee representatives for the appropriate period before any redundancies take place. Importantly, an employee's right to a redundancy payment is not affected if they also make an unsuccessful claim for unfair dismissal.

In situations where redundancies occur and it is unclear whether TUPE applies, it may also be uncertain which employer—the previous or the new one—is responsible for making redundancy payments. In such cases, employees are advised to submit claims against both employers and allow an employment tribunal to determine whether a transfer has taken place and who holds the responsibility.



You should look to ensure you are aware of any TUPE obligations and/or considerations when taking on a business opportunity and can find out more at:

[www.gov.uk/transfers-takeovers](http://www.gov.uk/transfers-takeovers)