

# Transfer of Undertakings (Protection of Employment) Regulations 2006

The above regulations aim to protect employees if the business they work for changes hands. Please see below some questions and answers you may find helpful given you are assigned for transfer to a new employer.

## **What does TUPE mean?**

TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006), amended 2014.

## **Which transfers does TUPE apply to?**

TUPE applies to two main types of transfers: business transfers and service provision changes. A business transfer occurs when a business or part of a business is transferred from one employer to another, retaining its identity.

A service provision change happens when a client outsources work, reassigns a contract, or brings work back in-house (insourcing).

## **Why do we have TUPE?**

TUPE regulations exist to protect employees' rights when the business they work for is transferred to a new employer.

This means that when a business is sold, merges, or has a change in service provider, TUPE ensures that employees' existing terms and conditions, and their continuity of employment, are transferred to the new employer (other than any measures/ proposed changes after the transfer).

## **Does TUPE apply to me?**

Management will seek advice from HR and Legal Services to review each potential TUPE (business transfer or service provision change) to clarify if TUPE applies and to determine which employees are affected. You will be informed by your line manager if you are in an affected staffing group.

## **How will I find out more about the transfer?**

There is a legal obligation for the council to consult with all affected employees, and their trade union representatives. This is to inform them of the proposed reason for transfer, details about the new employer, transfer date and any measures (proposed changes following your transfer) the new employer plans to take.

## **Do I have to transfer?**

Yes, TUPE is mandatory when a business or service is transferred to a new employer. This means that both the old and new employers must comply with TUPE regulations to protect employees' rights. Failure to comply can lead to legal repercussions, including potential financial penalties.

## **What if I refuse to transfer?**

If an employee refuses a TUPE transfer, their employment with the council will end, typically on the date of the transfer. In law this will not be treated as dismissal and in effect you will be considered as having resigned.

## **Will I keep my existing terms and conditions?**

Yes, generally, if a TUPE transfer applies to your employment, your existing terms and conditions of employment will transfer to the new employer. This includes all aspects of your contract, such as your wage, benefits, and other contractual rights.

If it transpires that the new organisation are not replicating your terms exactly, these are referred to as measures and will be discussed with you during consultation.

### **Will my pay remain the same?**

Generally, under TUPE your pay should remain the same when your employment transfers to a new employer. This includes your salary, contractual bonuses, commission, and any other contractual benefits related to pay.

### **Will my new employer recognise my continuous service date as part of the TUPE transfer?**

Yes, your new employer must recognise your continuous service date as part of a TUPE transfer. So, the whole period of continuous employment with Derbyshire County Council and any previous service with other Local Authorities will be recognised for the purposes of any entitlement to statutory employment rights.

### **If I TUPE transfer out of the Council, and then the service TUPE transfers back in, will the Council recognise my Local Government Continuous Service date?**

Yes, the whole period of continuous employment with Derbyshire County Council and any previous service with other Local Authorities will be recognised for the purposes of any entitlement to statutory employment rights.

### **If I TUPE transfer out of the Council, and then apply for a different position back in the Council at a later date, will the Council recognise my original continuous Local Government service date?**

This will depend if you have remained employed within the public sector. The Council may not recognise continuous service where you have transferred out to a private provider, and then re-apply for a job with the Council.

Even if continuous service is recognised for certain entitlements, not all benefits may be the same as when you left. Your pay, for example, will depend on the new position. It's recommended to clarify the specific details with the Council's recruitment department during the application or offer process.

### **Will my annual leave be affected?**

In general, under TUPE your annual leave entitlement, as a contractual term, will transfer with your employment to the new employer. This means your new employer cannot simply reduce your holiday entitlement because the business has transferred.

### **Will my Trade Union be recognised?**

Not automatically. This will depend if your union is recognised by the new employer. If not, the trade union and the new employer would need to renegotiate recognition.

### **Can my terms and conditions of employment be changed in the future?**

Under TUPE (Transfer of Undertakings (Protection of Employment)) your terms and conditions of employment are generally protected when you transfer to a new employer.

However, there are certain circumstances where your terms and conditions might be changed in the future, even after a TUPE transfer which include:

- Changes for an Economic, Technical, or Organisational (ETO) Reason
- Changes Permitted by Your Contract
- Changes Agreed Through Collective Agreements
- Improving Your Terms and Conditions
- Changes Unrelated to the Transfer

Key points to remember are that changes solely due to the transfer are void, your consent is generally required and the protection period is indefinite.

### **What will happen to my local government pension?**

The Best Value Authorities Staff Transfers (Pensions) Direction 2007 gives pension protection on transfer. The new employer must allow an employee to acquire rights to pension benefits that are the same as, or are broadly comparable to or better than those in the Local Government Pension Scheme (LGPS). This Direction protects pensions on a subsequent change of employer where this is due to a transfer of the service or function and its provisions are enforceable by employees.

### **Does TUPE apply to contractors?**

Self-employed individuals or independent contractors, who are typically engaged under a contract for services, are generally not covered by TUPE. Only affected employees, directly employed by Derbyshire County Council will transfer under TUPE.

### **What happens between now and the date of transfer?**

Business carries on usual in that you continue to fulfil your role with the council.

### **What information about me will be given to my new employer?**

When your employment is transferred under TUPE the council is legally required to provide your new employer with specific information about you and the other transferring employees. This is known as Employee Liability Information (ELI). ELI includes

- Your personal details, include name, address, date of birth, etc.
- Information contained in your written particulars of employment, e.g. your pay, hours, holiday entitlement, and other terms and conditions of employment.
- Details of any relevant collective agreements affecting your terms and conditions that would apply after transfer.
- Information about any disciplinary action taken against you in the past two years.
- Information about any grievances raised by you in the past two years.
- Details of any legal action, including potential action, that you've brought against the council in the past two years.

The council must provide the ELI to your new employer at least 28 days before the transfer date. However, where possible we aim to exchange the data as early as possible to allow for proper consultation and planning.

### **Will I be consulted with about the TUPE?**

Yes, you have a legal right to be informed and consulted about a TUPE transfer and the council will decide the best way to consult with you based on the number of employees transferring. There is not a minimum legal timescale for consultation, but best practice advises it to be as soon as possible.

Present at any TUPE consultation meeting are council representatives, the new employer, the affected employees and trade union representatives.

Consultation will include the proposed reason for the transfer, the transfer date, measures the new employer intends to take. It is also an opportunity for employees to ask questions.

### **What if I am absent from work and on long term sickness?**

You will be contacted and consulted about the impending TUPE transfer in the same way as employees who are in work.

Up to the point of transfer you will continue to be managed under the council's attendance management procedure. At the point of transfer your new employer will contact you and manage your

employment and sickness absence. You will be contacted and consulted about the impending TUPE transfer.

If your absence is deemed permanent and there is no real prospect whatsoever of you returning to work to carry out your role, then you may not be considered assigned to the organised grouping and may not transfer under TUPE,

**What if I am on maternity leave?**

You will be contacted and consulted about the impending TUPE transfer in the same way as employees who are in work.

Your employment will automatically transfer to the new employer on your current terms and conditions, and will then be managed by the new employer from the date of transfer.

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