

TUPE JARGON-BUSTER

During the forthcoming transition period it is to be expected that many new “terms” maybe used. This is to be fully expected, for as with every profession, human resource managers have their own language and definitions. Therefore the following is an attempt to clarify some of the terminology – and if you have other words or phrases that you think should be explained, contact us on the message board www.cxoxfordshire.org.uk, and we will add them to the list.

Due Diligence

Due diligence is a formal phase of contract negotiation whereby both (or all) parties undertake a process to test and verify their understanding of the contract and commitments to be entered into. This will often include verification of financial information, the names and details of staff that may transfer, assets, property, maintenance and lease agreements, etc.

Measures

TUPE does not provide a formal definition of a measure. However, it is clear that it covers any significant change in the employees' working practices or conditions **after** the transfer has taken place. The change maybe as simple as a new pay date or it could be as complex as a re-organisation. In cases where there are no measures following a transfer, the new employer must say so.

Information and Consultation

The new employer known as the transferee, is required to provide information long enough before a transfer to enable the old employer, known as the transferor, to consult with their appropriate representatives about any measures which the new employer envisages it will take in relation to the transferring employees. There is a direct link between the extent of any measures proposed and the required duration of consultation.

Relevant Transfer

There are two broad categories of a transfer that under TUPE Regulations are relevant and thus will ensure that the transfer is legal;

- a business transfer, where there is a stable economic entity that is capable of being transferred, or
- a service provision change, where contracts are reassigned or the work is taken in-house

Transferor

The term given to a company transferring staff out (in this instance Oxfordshire County Council and CfBT Education Trust)

Transferee

The term given to a company transferring staff in (in this instance Connexions Oxfordshire)

Appropriate Representative

Where the employer recognises an independent trade union, the appropriate representatives will be trade union representatives for example with Oxfordshire County Council and CfBT Education Trust this is UNISON/CYWU. Additionally employers should also make arrangements for non trade union represented employees to elect their representatives for consultative purposes.

Economic, Technical or Organisational (ETO) reasons

A dismissal of an employee by either the transferor or transferee because of the TUPE transfer will be automatically unfair unless there is a detailed ETO reason (economic, technical or organisational) entailing change in the workforce.

Some examples of an ETO are:

- **Economic** reasons - where the demand for output or the product has fallen to such an extent that profitability of the entity is unsustainable without dismissing staff
- **Technical** reasons - where the transferee wishes to use new technology and the staff employed by the transferor in the entity do not have the requisite skills
- **Organisational** reasons - where the transferee operates at a different location and it is not practical to transfer staff

TUPE

TUPE is an acronym for the Transfer of Undertakings (Protection of Employment) Regulations 2006.

TUPE is a significant and complex piece of legislation adopted by the UK in order to implement the European Acquired Rights Directive. The purpose of TUPE is to protect employees if the business in which they are employed changes hands and they are required to transfer.

Acquired Rights Directive

The Acquired Rights Directive is a consolidating Directive based on the approximation of the laws of the EC Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

Slotting/Matching

Terms used to describe the automatic appointment or pooling of post holders when transferring under TUPE from one organisation to another following receipt of a clear ETO reason that has been conveyed in a measures letter.

Great care must be taken in with these terms and how they can be interpreted and applied to individual each staff member. The process of slotting and matching would, in most cases, involve information and consultation with trade union representatives and or elected staff representatives.

Red-Circling

A term used to describe the practice of protecting the pay of staff whose job is re-graded or is required to take a post on a lower salary following for example a TUPE Transfer. Pay is frozen until such time as the salary for the new post catches up with the salary for the former post.

Ring-Fencing

A term used when a group of staff have been identified as having relevant skills and experience for a particular post in an organisation and therefore will be given priority in the selection process for that post.