

## TUPE Developments: February 2014 Changes to UK TUPE Regulations

***Newly enforced regulations change UK law on the transfer of undertakings, applicable to transfers which take place on or after 31 January 2014.***

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), which implement the Acquired Rights Directive (ARD) in the UK, protect the employment rights of employees when there is a transfer of a business or a “service provision change” (broadly, an outsourcing situation). In line with the UK government’s on-going commitment to simplify and ease restrictive employment laws for employers, new regulations have recently come into force which amend TUPE with the aim of making transfers easier and fairer.

TUPE is being amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (the 2014 Regulations). All of the changes took effect from 31 January 2014, except where noted below. The key changes are:

- **Service Provision Changes** The definition of what amounts to a service provision change is amended to clarify that for TUPE to apply the business activities carried on after the transfer must be “fundamentally the same as the activities carried out by the person who has ceased to carry them out”. The government decided against repealing all the regulations regarding service provision changes, as originally proposed.
- **Pre-transfer Redundancy Consultation** Where the transferor and transferee agree, a period of redundancy consultation that begins pre-transfer (and that will be carried out by the transferee not the transferor) can count towards the transferee’s obligation to carry out collective consultation on redundancies that occur on or after the transfer. Transferees wishing to rely on these new provisions should document their agreement in writing with the transferor.
- **Employee Liability Information** The transferor’s obligation to provide employee liability information will be extended so information must be provided 28 days before the transfer, rather than 14 days as was previously required. This amendment will not come into force until 1 May 2014.
- **“Micro-businesses”** A new provision allowing “micro-businesses” (employers with less than 10 employees) to inform and consult with employees directly where there is neither a recognised union nor any existing appropriate representatives. This new provision will not be introduced until 31 July 2014.

- **Changes to Terms and Conditions** Clarification that any variation to a transferring employee's contract is void only if the sole or principle reason for the change is the transfer. If the reason for the variation is merely connected to the transfer, the variation will not fall foul of TUPE. Even where the reason for the variation is the transfer, the changes will be permitted if (i) the reason for the change is an economic, technical or organisational (ETO) reason and the employee and employer both agree the change; or (ii) the terms of the contract allow the employer to make such a variation.
- **Collective Agreement Status** Confirmation that a "static" approach will apply to a collective agreement and amendments to the collective agreement that come into force after the date of the transfer will not become part of the employees' terms and conditions, unless the transferee is a party to the collective agreement for that provision.
- **Re-negotiating Collective Agreement Terms** A new provision which allows employers to re-negotiate terms derived from collective agreements that automatically transferred, provided that the overall changes are "no less favourable to employees". Such changes can only take place one year after the TUPE transfer.
- **Changes to Workplace Location** Confirmation that a change in the location of the workforce following a transfer will constitute an "economical, technical or organisational reason entailing changes in the workforce" (ETO) reason. This change clarifies (and confirms the generally accepted position) that redundancies in these circumstances will not be automatically unfair. Further, a dismissal for refusing to accept a new workplace location (or an employee resigning and claiming constructive dismissal) in these circumstances will not be automatically unfair.

These changes are certainly good news for employers; providing greater clarity on certain commonly adopted practices and also introducing more flexible arrangements for employers when faced with a TUPE transfer. These changes are not the radical changes that the government originally proposed and the impact may be relatively limited in practice. The changes to pre-transfer consultation are likely to cause the greatest uncertainty in the coming months, and until there is case law in this area, transferees should approach this new provision with caution and should seek advice when looking to carry out pre-transfer consultation.

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