

# The TUPE process: explained

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The Transfer of Undertakings (Protection of Employment) Act 2006, known as TUPE, generally applies to asset purchases rather than share sales, and it transfers employees assigned to any part of a business that keeps its identity after the transfer.

Those employees move automatically to the buyer, keeping their existing contractual terms (except some pension rights) and their continuous service, as if they had always worked for the new employer.

## Step one: identifying the affected employees

This is simple when an entire business is sold, but if only part is being acquired, you must identify which employees are assigned to that part. Those employees transfer automatically on completion - neither party can choose who does or doesn't transfer.

If more than 10 employees are affected **OR** the buyer employs more than 50 employees, the employer is required to collectively consult, rather than on an individual basis.



Consideration should also be given as to whether trade unions need to be notified or consulted with as part of this process.

## Step two: information and consultation



Once the affected employees have been identified, the sellers must provide the employee liability information to the buyer at least 28 days before the transfer. This sets out the key terms of the employment of each affected employee.

Both the buyer and the seller then have informing and consulting obligations.

The buyer must tell the seller if it plans to make any changes affecting transferring employees, such as altering work location, hours, or pension arrangements.

The seller must then give certain information to the affected employees, usually through trade union or elected representatives, if there are more than 10 affected employees or the business has over 50 staff. This is normally done using a 'measures letter', which sets out:

- a) The fact and proposed date of the transfer
- b) The reason for the transfer
- c) The legal, economic and social implications of for the affected employees
- d) Any measures the buyer proposes post-transfer or confirmation that there are no measures envisaged

Although consultation is only legally required if a party plans to take measures affecting its own employees, the buyer will usually work with the seller to consult with each employee or their representatives about the transfer and any planned changes, addressing any questions or concerns.

Employees can choose to refuse the transfer. If they do, their employment ends automatically on the transfer date, and because this isn't treated as a dismissal or resignation, they are not entitled to any statutory or contractual compensation.