

BLP: LOOKING AHEAD

Key changes in employment law explained

14 January 2014

BP BERWIN
LEIGHTON
PAISNER

TUPE

On 10 January 2014, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 were laid before Parliament. These Regulations are the final outcome of the Government's consultation on proposed changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). The majority of the amendments come into force on 31 January 2014 as anticipated.

As we reported when the draft regulations were published in September 2013, the changes are not as far reaching as expected. The final position is summarised below.

The changes

Position under TUPE 2006

TUPE contains regulations designed specifically to bring most service provision changes within the ambit of TUPE, whether insourcing, outsourcing or second generation contracting.

Specific information regarding the transferring employees (known as employee liability information) must be provided by the transferor to the transferee at least 14 days before the transfer.







Dismissals are automatically unfair and changes to terms and conditions are void if the sole or principal reason for the change is the transfer itself or a reason connected with the transfer that is not an ETO reason. An ETO reason is an economic, technical or organisation reason entailing a change in the workforce.

Amended Position from January 2014

The service provision change regulations remain in place, but are amended to clarify that the activities must be "fundamentally or essentially the same" after the purported transfer as before.

This obligation remains in place, but with the information having to be provided at least 28 (rather than 14) days before the transfer. This applies to TUPE transfers occurring on or after 1 May 2014.

The amended regulations state that transferees may vary a contract either where (a) the sole or principal reason is an ETO reason and the employee agrees to the variation; or (b) where there is a contractual term in place which permits the variation. The scope of (a) is more limited than in the draft regulations in that consent is required. The effect of these changes is unclear. Revised Government guidance is expected to provide clarification.

<p>Employees are protected against dismissals on a transfer, except where there is an ETO reason. Case law says that a change in location does not amount to an ETO reason.</p>		<p>TUPE is amended to provide that a change in location can fall within the remit of an ETO reason.</p>
<p>A transferor cannot rely on the transferee's ETO reason to make redundancies pre-transfer.</p>		<p>No change.</p>
<p>Where substantial changes are proposed to a transferring employee's working conditions to the employee's material detriment, this can be an automatically unfair dismissal even where there is no breach of contract. It can also result in liability remaining with the transferor for changes proposed by the transferee.</p>		<p>No change.</p>
<p>If collective redundancies are proposed, any consultation with the transferring employees pre-transfer does not count towards the minimum consultation period for large scale redundancies.</p>		<p>Provided both parties agree, the transferee can count any period of meaningful pre-transfer consultation towards the minimum period for collective redundancy consultation.</p>
<p>There is no time limit on the period for which a transferee has to observe the terms of a collective agreement inherited on a transfer.</p>		<p>The transferee can renegotiate terms of a collective agreement one year after the transfer, on condition that the changes are no less favourable to the transferring employees.</p> <p>The regulations clarify that the static approach applies to collective agreements. This means that transferees are not bound by changes to the collective agreement that are made post transfer where the transferee is not a party to the negotiations.</p>
<p>All employers must inform and consult with elected representatives or recognised trade unions.</p>		<p>Micro businesses (those with fewer than 10 employees) can inform and consult with their employees directly, where there is no trade union. This takes effect for transfers from 31 July 2014.</p>

BLP Comment

- Despite its intention to repeal the service provision change element of TUPE, it is clear that the Government has listened to the overwhelming objections to this proposal. Its retention will be a welcome relief in the outsourcing sector, as will confirmation that a change of location can amount to an ETO reason. The current case law on this issue has created a significant risk for outsourcing operators, who often relocate transferring employees.
- The extended period for the provision of employee liability information is unlikely to satisfy incoming service providers, but the retention of this obligation will be welcomed.
- The ability for transferees to consult for the purposes of mass redundancies prior to the transfer taking place is likely to be relied upon heavily and should reduce financial burdens on incoming employers.

For further information, please contact:



Rob Eldridge
Partner
T: +44 (0)20 3400 4202
rob.eldridge@blplaw.com



Mark Kaye
Senior Associate
T: +44 (0)20 3400 4025
mark.kaye@blplaw.com

Getting in touch

If you would like to talk through your project or discuss solutions to your legal needs, please get in touch.

London

Adelaide House, London Bridge
London EC4R 9HA England

Rob Eldridge

Tel: +44 (0)20 3400 4202
Rob.eldridge@blplaw.com

About BLP

Today's world demands clear, pragmatic legal advice that is grounded in commercial objectives. Our clients benefit not just from our excellence in technical quality, but also from our close understanding of the business realities and imperatives that they face.

Our achievements for clients are made possible by brilliant people. Prized for their legal talent and commercial focus, BLP lawyers are renowned for being personally committed to clients' success. Our approach has seen us win five Law Firm of the Year awards and three FT Innovative Lawyer awards.

With experience in over 70 legal disciplines and 130 countries, you will get the expertise, business insight and value-added thinking you need, wherever you need it.

Expertise

- Commercial
- Competition, EU and Trade
- Construction
- Corporate Finance
- Dispute Resolution
- Employment, Pensions and Incentives
- Finance
- Funds and Financial Services
- Intellectual Property
- Private Client
- Projects
- Real Estate
- Regulatory and Compliance
- Restructuring and Insolvency
- Tax

Clients and work in 130 countries, delivered via offices in:

Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, London, Moscow, Paris and Singapore

www.blplaw.com