



## TUPE - BUYING OR SELLING A BUSINESS

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) imposes certain obligations on both a Buyer and a Seller when transferring a business. This bulletin outlines the steps both parties must take in order to comply with TUPE.

### *“TUPE Information”*

A Seller is obliged to provide, in writing, certain information to the Buyer about its employees, called TUPE Information or more formally “Employee Liability Information”. At a minimum the information provided should include:-

- The identity and age of employees;
- Particulars of employment that the employer is obliged to be given under section 1 Employment Rights Act 1996 (ie their Statement of Terms);
- Information about any disciplinary or grievance action taken within the past 2 years;
- Information about any court/tribunal case, claim or action brought by an employee within the past 2 years or potential claims which the Seller believes may arise; and
- Information about any collective agreements.

The information must be no more than 14 days old when it is given to the Buyer. If any circumstances change, details of the changes must also be given, in writing, to the Buyer.

### *Duty to Inform and Consult*

Both the Seller and Buyer have an obligation to inform “appropriate representatives” (union or employee representatives) of their employees who may be affected by a business transfer and in some cases, consult about any “measures” to be taken in connection with it. Employee representatives must be specifically elected for this purpose or more generally elected but with authority to consult on this issue. There are specific guidelines on making arrangements for elections. Strictly speaking, only where the employees fail to elect representatives, should an employer inform each employee on an individual basis.

- The law specifies exactly what information about the sale is to be provided to the representatives (eg the fact of the sale and when it is to take place).
- The information should be provided “long enough before the transfer to enable the employer to consult representatives” (ie as soon as possible).
- An employer has a defence if it can show that there were special circumstances making it not reasonably practicable for information and/or consultation to take place and that it had done the best it could in the circumstances;

Thursfields Offices: Worcester, Kidderminster and Stourport.  
Contact: Telephone 01562 820575 Website: [www.thursfields.co.uk](http://www.thursfields.co.uk) Email: [info@thursfields.co.uk](mailto:info@thursfields.co.uk)

- The Seller should request, in writing, details of any “measures” that the Buyer is proposing to take after the transfer (eg changes which will affect employees). A Buyer has an obligation to provide the Seller with information about any “measures” he proposes to take in connection with the purchase.
- If changes are planned, this will trigger a further obligation to consult with the representatives of affected employees about such changes;
- Where no changes are planned, this fact should be communicated to the staff but there is no further obligation to consult.

A practical approach to complying with the consultation process, where measures are planned, may be for the Buyer to attend a meeting with the Seller’s staff before the transfer. Consultation can then be undertaken, with the proposed measures explained and discussed with staff. Consultation should be undertaken with a view to seeking agreement.

### ***Penalties***

The Buyer can bring a Tribunal complaint against the Seller for a failure to provide “TUPE information”, usually within 3 months of the sale. Any compensation awarded at Tribunal will take account of any loss sustained by the Buyer, subject to a minimum of £500 per employee (unless it would not be just and equitable to make that award.) Of course, a Buyer is likely to want more than this basic information, but the Seller should ensure that it has at least provided this information in order to comply with its legal obligations.

As well as complaints about a failure to elect representatives or elect them in accordance with statutory procedures, a Seller or Buyer may also face a Tribunal complaint about a failure to inform and consult. Compensation can be up to 13 weeks’ pay per affected employee. Under the latest TUPE rules, the Buyer and Seller will be jointly and severally liable for any compensation awarded by the Tribunal against a Seller for failure to inform and consult. It is also possible that if a Buyer or Seller is ordered to pay compensation but fails to do so, then the Tribunal could order the other party to pay the complainant.

These rules may seem onerous, but it is important that both the Buyer and Seller are aware of their obligations and decide what action to take towards compliance. Any sale and purchase agreement may contain indemnities which seek to pass on liability for non-compliance but of course this will depend upon the bargaining power between the contracting parties.

If you need any further guidance on compliance with TUPE or employment matters generally, please contact our Employment Law Specialist, Michelle Chamberlain on 01562 512 412 or email at [mchamberlain@thursfields.co.uk](mailto:mchamberlain@thursfields.co.uk).

### ***DISCLAIMER***

*The content of this publication is for general information purposes only. It does not constitute professional advice (legal or otherwise) nor should it be used as such. We cannot accept responsibility for actions based on the material contained herein.*

**April 2008**