

Checklist for TUPE

TUPE -- checklist

o **Obtain essential information**

- prepare lists of employees and of contact names and telephone numbers for relevant union officials or employee representatives.
- identify precisely what is being transferred or contracted-out (it may be a business or part of a business or an economic activity).
- identify who will be transferring the business.
- identify who will be continuing the business.
- identify which employees will be employed by the transferor in the business immediately before it is transferred (or, where the transfer is effected by a series of two or more transactions, employees who immediately before the transfer are employed by the transferor and assigned to the organised grouping of resources or employees).
- identify all affected employees -- any employees of the transferor or transferee (whether or not employed in the undertaking or the part of the undertaking to be transferred) who may be affected by the transfer or may be affected by measures taken in connection with it.
- identify any independent trade unions are recognised by the transferor/transferee in respect of the affected employees.
- if there are no independent trade unions, identify any existing employee representatives elected by the affected employees whose remit gives them sufficient authority to act as 'appropriate representatives' or any employee representatives elected specifically for the purposes of consultation and receiving information.
- identify any measures you envisage taking in connection with the transfer of the business in relation to the affected employees and the likely effect of such measures. Measures include plans or proposals that you foresee and have in mind to implement including any material change in existing work practice or working conditions and will certainly include redundancies (whether voluntary or compulsory).

o **Ensure election of employee representatives**

- If the workforce is non-unionised and there is no other suitable representative body, invite your affected employees to elect their own representatives. This should be done early enough to allow your affected employees sufficient time to elect their representatives before you begin the information and consultation process.

o **Provide 'employee liability' information**

- The transferor must provide the transferee with specified employee liability information at least two weeks prior to completion. If special circumstances make this not reasonably practicable, the information must be supplied as soon as is reasonably practicable.
- If the information changes after being provided but before completion of the transfer, the transferor must notify the transferee of those changes in writing.
- The information must be provided in writing or in other forms which are 'readily accessible' to the transferee.
- The information must be given for every transferring employee (including employees who would have transferred if they had not been automatically unfairly dismissed in connection with the transfer):
 - their identity and age;
 - their s1 ERA 1996 particulars of employment;
 - any collective agreement which will apply to them after the transfer;

- ▶ any disciplinary or grievance procedure operated in relation to them in the last two years to which the statutory dispute resolution procedures or the Acas Code of Practice on disciplinary and grievance procedures apply;
- ▶ any court or tribunal claim against the transferor they have brought in the last 2 years or the transferor has reasonable grounds to believe they may bring. It is a matter of judgement whether there are reasonable grounds to anticipate a claim.

o **Provide 'measures' information**

- If you are the transferee, write to the transferor and inform him of the measures, if any, that you envisage taking in connection with the transfer of the business in relation to the transferring employees.
- If you are the transferor, you should provide your own and the transferee's measures information to the union/employee representatives. This consists of:
 - ▶ the fact that the transfer is to take place;
 - ▶ when, approximately, the transfer is to take place;
 - ▶ the reasons for the transfer;
 - ▶ the legal implications of the transfer of the business for the affected employees (ie the impact of the transfer on the employees' contractual or statutory rights against their employer);
 - ▶ the economic implications of the transfer of the business for the affected employees (ie any effect on pay and prospects);
 - ▶ the social implications of the transfer of the business for the affected employees (ie social security implications such as pensions and National Insurance, amenities such as sporting facilities and socials clubs, employee concessions and staff discounts); and
 - ▶ the measures you envisage you will take in connection with the transfer in relation to the affected employees, or, if you envisage that no measures will be taken, that fact. Measures is a wide word and includes any action step or arrangement. 'Envisages' is vaguer than 'intends' and means visualises or foresees. The duty to consult arises where the employer has formulated a definite plan or proposal which it has in mind to implement, if necessary after appropriate negotiation with the unions.
- The information must be provided long enough before the transfer to enable the information and consultation process to be completed by the time the transfer takes place. If you envisage taking any measures, try to assess whether they are likely to be a contentious issue and/or will need to be discussed at length with the unions or employee representatives. Estimate the time this is likely to take. Consider whether the consultation period will coincide with a traditional holiday period when it may be difficult to arrange meetings and any other factors which may delay consultation.
- The information should be in writing and delivered by hand to the unions or employee representatives or by post to the union's main or head office or an address notified to you by the appropriate representatives.

o **Carry out consultations with unions or employee representatives**

- If you envisage taking measures in connection with the transfer of the business in relation to any of your affected employees, you must consult with unions or employee representatives with a view to reaching agreement about those measures.
- Consulting with a view to seeking 'agreement' places an onus on the employer to show that a genuine attempt is made to achieve agreement. Accordingly, employers must not merely present their proposals as a *fait accompli* but should strive to enter into full and

proper discussions with employee representatives with a view to achieving consensus as to the way the transfer will be carried out and the way in which its effects on employees will be managed.

- During consultation you are under a duty to consider any representations made by the unions or employee representatives and to reply. If you reject any of the representations you must state your reasons for the rejection.
 - Keep detailed notes of the discussions at the consultation meetings with the unions or employee representatives.
 - Consultation should be completed before the business is transferred so you need to start as soon as possible.
- o Inform and consult about redundancies**
- If one of the measures you envisage is that some or all of your affected employees will be made redundant, you may need to begin informing and consulting about collective redundancies in parallel with your TUPE consultation. This may involve giving further information to the unions or employee representatives; and may also require further consultation with unions or employee representatives and with individual employees. It may also be necessary to notify the Department of Trade and Industry. Redundant employees ought to be entitled to a redundancy payment whether or not their dismissals are for an economic, technical or organisational reason entailing changes in the workforce.
- o Notify transferring employees of employment changes**
- If you are the transferee, you must notify each of the transferring employees in writing, no later than one month after the date of the transfer of the business, of:
 - the identity of their new employer;
 - the date of commencement of their employment with the new employer;
 - the date on which their continuous employment began; and
 - any other changes (improvements), if any.