



TUPE and Employees

Employees are afforded special protection when there is a transfer of the employer's assets or business. In these circumstances, the provisions of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) are triggered and it's important to be aware of its impact and consequences when selling/buying a care home.

Key Principles

TUPE applies to all companies, irrespective of size, and are designed to protect employees' employment and terms and conditions when a transfer of business or assets is taking place.

The key principles are:

- Anyone employed by the seller in the transferring business/assets will automatically transfer to the buyer on exactly the same terms and conditions of employment. Employees may object to the transfer of their employment but the effect of that objection is to terminate the employment without any compensation.
- All rights, powers, duties and liabilities under the contracts of employment of the transferring employees will pass to the buyer.
- Any changes to terms and conditions of employment connected with the transfer will be void save in certain limited circumstances.
- Any dismissal connected with the transfer would be automatically unfair save in certain limited circumstances.
- The seller and the buyer must inform and, if measures are going to be taken in relation to the employees, consult with employee representatives.

Information and Consultation

Regulation 13 of TUPE requires the buyer and seller to inform and consult with its affected employees. This information and consultation process should be undertaken with either a recognised trade union or elected employee representatives (if no trade union is recognised) or employees directly if the employer employs fewer than 10 employees. The process should take place long enough before the transfer to enable information to pass and consultation to take place about:

- The fact that a transfer is to take place along with the date (or proposed date) of the transfer and reasons for it;
- The legal, economic and social implications of the transfer for the affected employees;
- The measures which the employer envisages it will take in relation to the employees (and if nothing then that fact); and
- The measures which the incoming employer envisages it will take in relation to the employees (and if nothing then that fact).

Failure to inform and consult can result in an Employment Tribunal awarding up to 13 weeks' actual pay per affected employee and so it is important to get this right.

Employee Liability Information

Connected with the duty to inform and consult is the requirement of the seller to provide certain information about the transferring employees (known as employee liability information) to the buyer. This information must be supplied at least 28 days before the transfer and must be in writing or some other accessible form.

Planning and Strategy

It is important to consider early on in any sale/purchase process what will happen to the employees and how the information and consultation process will take place. In particular, it is worth considering early on:

- Who is likely to be affected by the proposed transfer of the care home?
- How will you provide those affected with the appropriate information?
- Is there a recognised body of representatives such as a trade union to consult with?
- When is the best time to release information about the proposed transfer?
- How do you deal with ongoing grievances throughout and beyond the transfer process?
- What measures are likely to be taken in connection with the transfer?

Adams & Remers LLP has extensive experience in advising on TUPE transfers. If you require assistance please do not hesitate to get in touch.

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This article is not intended to be a full summary of the law and advice should be

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