

BRIEFING SHEET

Employee Issues In Business Sales or Purchases

When buying or selling a company or any part of a business or even when making a change to an outsourced contractor it is essential to consider the effect of the Transfer of Undertaking Regulations (usually known as TUPE). Put simply the Regulations are intended to give employees continuity of employment when business change hands and to protect their existing terms and conditions of employment. Failure to consider the TUPE Regulations may result in a claim to an Employment Tribunal for unfair dismissal and / or related issues. This can result in the following:

- Financial penalty – the compensatory award limit for unfair dismissal is now £78,335
- Adverse publicity
- Unnecessary time wasted

What Is An Undertaking?

- An undertaking includes any enterprise or business

Transfer

- This usually relates to a sale of a business. There are however other situations where the TUPE Regulations apply, e.g. where a company dismisses in-house cleaners and hires an outside firm to provide cleaning services.

What Are The Main Effects?

- Employees are entitled to retain the same terms and conditions of employment, potentially without limit in time.
- The new owner of the business inherits all rights and liabilities in connection with incoming employees. In some circumstances the Seller may also retain ongoing liabilities.
- Both the Buyer and Seller must consult with “affected” employees either through Trade Unions or employee representatives before the transfer. Failure to comply with these obligations may result in financial penalties for both Buyer and Seller.
- There are special rules for insolvencies

Avoidance Procedures

- The Regulations provide that any agreement to exclude the TUPE Regulations is invalid.

Always take legal advice!

These comments are provided for guidance only. Each situation has to be examined on its own merits and circumstances and you should not, therefore, rely upon the above without taking specific legal advice in relation to any particular matter.

Specialist advice can be obtained from Alan Matthew in our Dundee Office (tel: 01382 200 000) or from Emma Allan in our Perth Office (tel: 01738 637 311)