

# Proposed TUPE amendments

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# Proposed TUPE amendments

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Parliament has amended the TUPE regulations, which are in force in respect of transfers occurring on or after 31 January 2014.

In brief, the changes include:

1. A new employer (with the old employer's agreement) can elect to consult about large scale redundancies pre-transfer of the work force;
2. For a service provision change (e.g. outsourcing) to be

covered by TUPE, the activities carried out by a new organisation must now be 'fundamentally the same' as those carried out by the old organisation;

3. Any purported variation of a contract of employment that is transferred under TUPE or the dismissal of an employee will still be automatically unfair if the 'sole or principal reason' for the variation or dismissal is the transfer. However if the sole or principal reason for the variation or dismissal is an economic, technical or organisational reason entailing changes in the workforce which expressly includes redundancies caused by relocations, then this is not unfair and a variation of terms may be valid;
4. Where a transferring employee's contract of employment includes a collective agreement clause (i.e. where contract terms are updated as a result of negotiations between an employer and a trade union); any changes to collective terms agreed post-transfer without the new organisation's approval will not automatically transfer;
5. The outgoing employer now has to provide "employee liability information" at least 28 days (rather than 14) before the transfer from and including 1 May 2014; and
6. Small businesses with less than 10 employers will be able to consult directly with employees (instead of representatives) affected by a TUPE transfer occurring on or after 31 July 2014.

These changes are intended to benefit employers. For example, the effect of (4) means that employers who inherit staff under TUPE from the public sector will have certainty over transferring employees salary costs when tendering for service contracts.

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