

Employee rights during a TUPE transfer

TUPE regulations protect your rights as an employee when you transfer to a new employer.

TUPE stands for the Transfer of Undertakings (Protection of Employment) regulations.

A 'TUPE transfer' happens when:

- an organisation, or part of it, is transferred from one employer to another
- a service is transferred to a new provider, for example when another company takes over the contract for office cleaning

You may be affected by a TUPE transfer if:

- you're transferring from your current employer to a new employer
- other employees are transferring to a new employer but you stay employed with your current employer and do not transfer
- other employees have been transferred to the organisation you work for

1. Your rights under TUPE

Your rights are protected under TUPE if both of these things apply:

- you're [legally classed as an employee](#)
- the part of the organisation that's transferring is in the UK

The size of the organisation you work for does not matter. For example, your rights are still protected if you work for a large organisation with many employees, or a small one like a shop or a pub.

What happens during a TUPE transfer

Every TUPE transfer may be different, but the usual process involves the following:

- the old and new employers identify who is affected by the transfer
- the old and new employers inform, and in some cases consult, employees who are affected by the transfer
- the old employer provides the new employer with information about the employees who are transferring, for example their age and identity
- the employees who are transferring transfer to the new employer along with their employment contracts and length of service

Your rights are protected under TUPE if both of these things apply:

- you're [legally classed as an employee](#)
- the part of the organisation that's transferring is in the UK

TUPE regulations can apply to both the public and private sectors.

2. Public sector transfers

TUPE applies to public sector transfers if the transfer is from the public sector into the private sector or from one public authority to another. For example, from the NHS to a local authority.

TUPE does not apply to transfers within the public sector where the employer does not change. For example, transfers within the Civil Service. But you will still get similar protections.

[Find out more about transfers within the public sector on GOV.UK.](#)

Types of transfer protected under TUPE

The 2 types of transfer protected under TUPE are:

- business transfers
- service provision changes

Business transfers

This is where a business or part of a business moves from one employer to another. This can include mergers where 2 businesses come together to form a new one. It's possible for the business, or part of it, to have just one employee.

Your employer must change for you to be protected under TUPE.

You will automatically transfer to your new employer when the transfer happens.

Service provision changes

This is where contracts are taken over. This can be because:

- a service provided in-house is taken over by a contractor (known as 'outsourcing')
- a contract ends and the work is transferred in-house (known as 'insourcing')
- a contract ends and is taken over by a new contractor (known as 'retendering')

Service provision changes often include contracts to provide labour-intensive services such as:

- catering
- security
- office cleaning
- rubbish collection
- machinery maintenance

You are not protected under TUPE if the contract is for:

- the supply of goods only, for example a pub changing food suppliers
- a single event or short-term task, for example a conference or an exhibition

To transfer under TUPE, you must be part of an 'organised grouping of employees'. This is the group of employees carrying out work for the 'client' (the organisation receiving the services). The organised grouping of employees may just have one employee.

If only part of your job is being transferred, whether TUPE applies will depend on whether you're part of an organised grouping of employees that meets the client's

needs.

The client must remain the same for TUPE to apply. For example, if the work you do has been outsourced to a contractor but you still provide the service for the same client.

Example

An organisation called WorkCo has contracted out the reception and security of their office to SecurityCo. When the contract ends, they retender the contract to SafeCo. WorkCo is the client as they are receiving the services. The reception and security staff are part of an organised grouping of employees, providing services to WorkCo. They'll transfer to SafeCo under TUPE. TUPE applies because the client WorkCo remains the same.

You should talk with your employer to find out if you're transferring under TUPE. If you and your employer do not agree whether you are in the organised grouping, you might want to [get legal advice](#).

Working abroad

TUPE could still apply if:

- you work abroad but your employer is based in the UK
- the purpose of the transfer is to move your organisation, or part of it, abroad – however this could also be a redundancy situation

This can be a complex area. To check how TUPE applies to your situation, you might want to [get legal advice](#).

Getting help and advice

You should talk to your employer or trade union representative if you're not sure whether you're transferring.

To talk through your situation, you can [call the Acas helpline](#).

If you're still not sure if TUPE applies, you might want to [get legal advice](#).

Your current employer must inform staff representatives (trade union or employee representatives) about the transfer. In some cases, your employer must also consult staff representatives on any changes they are proposing to make that will affect employees.

Your staff representatives will represent you during the consultation process. This process is a chance for your employer to explain the changes they're planning and why the transfer is happening.

3. What inform and consult means for you

'Inform' is when your current employer tells you the facts about the transfer. They must give you this information before the transfer.

'Consult' is when your current employer asks for and considers your feedback on the changes to working practices ('measures') that the transfer will bring, before making a decision.

The consultation will not discuss the fact that the transfer is happening. But it could include changes like:

- location of work
- the date you get paid
- hours of work

How this will affect you

If you're transferring from your current employer to a new employer, your employer must:

- tell you or your representatives that the transfer is happening
- give you or your representatives a copy of the 'measures letter' explaining any changes the new employer is planning to make

If you stay employed with your current employer but other staff transfer in or out, your employer should:

- tell you or your representatives that the transfer is happening

- consult with you or your representatives on any changes to working practices

Who your employer should inform and consult with

Your employer must consult with trade union or employee representatives about the transfer and which staff it will affect.

If there are no trade union or employee representatives, your employer should arrange an election to elect employee representatives to consult with.

In smaller organisations (fewer than 10 employees), your employer should consult with you directly unless there is a recognised trade union.

Your employer does not have to make the changes you and your representatives suggest.

Before they make a final decision, they do need to show that they've:

- discussed any changes with you
- listened to your suggestions and fully considered them
- tried to reach agreement

If they cannot come to an agreement, your employer should provide you with the business reasons for rejecting your suggestions and explain why in writing.

It is good practice for employers to keep all affected employees updated about the transfer, even if there are representatives.

The information you should receive

Your current employer must let you or your representatives know in writing:

- that the transfer is happening, when it will happen and why
- how the transfer will affect you – for example, if there's a change in location, working hours, job descriptions, salary payment dates or any risk of redundancies
- how they plan to carry out the transfer
- whether there'll be any reorganisation

- the number of agency workers employed, the departments they are working in and the type of work they are doing, if agency workers are used

If you are transferring to a new employer, your current employer must inform you of any changes the new employer is planning to make.

How you'll be represented

Your trade union or employee representatives, if you have any, will represent you in the consultation with your current employer.

They'll do this by:

- talking to you about the employer's transfer proposals and sharing information
- asking for your views and any questions you may have
- talking to other representatives and working out a collective staff response
- meeting with your employer to give feedback on the staff response
- taking part in open discussions to try to solve problems with a view to reaching an agreement
- keeping you informed about the discussions

Electing or becoming employee representatives

If there is no recognised trade union, you may need to elect employee representatives. You have the right to vote for employee representatives or stand for election yourself if you're affected by the transfer.

Your employer should make sure that:

- all employees who stand for election are affected by the transfer when the election takes place
- affected employees are not stopped from standing for election
- affected employees are given the right to vote for employee representatives
- affected employees can vote for as many candidates as there are representatives to be elected in their part of the organisation
- votes can be made secretly and counted accurately
- sufficient employee representatives are elected to represent the interests of all affected employees

Rights of employee representatives

During the transfer, employee representatives have the right to:

- a reasonable amount of paid time off for representation duties
- reasonable access to affected employees and workplace facilities

They may also be given paid time off for TUPE training.

They cannot be dismissed or treated unfairly because they're a trade union or employee representative.

[Find out more in the Acas guide to non-union representation in the workplace.](#)

When you should be informed and consulted

There is no fixed time period for informing and consulting you. By law, your employer must give your representatives this information long enough before the transfer so that they can explain and discuss it with you.

The time this will take depends on:

- the size of the organisation
- how many staff are affected
- the complexity of any changes

Your right to notice under TUPE

You'll be given notice of a TUPE transfer but there is no set length of time for this notice. Your employer is not ending your contract so they do not need to give you the same notice period as they would in other circumstances, for example if they were dismissing you.

All your current terms and conditions will automatically transfer from your old employer to your new employer on the transfer date.

If your employer does not inform or consult

By law, your employer must consult you when they make a TUPE transfer.

You may be able to [make a claim to an employment tribunal](#) if:

- there was no recognised trade union and no employee representatives were elected
- you were an employee representative and were not properly consulted
- you worked in a smaller organisation (fewer than 10 employees) and your employer did not consult you directly

If there was a recognised trade union and it was not consulted, the union could make a claim.

If the claim is successful, you could receive up to 13 weeks' pay. Either your old or new employer could be liable to pay the compensation, or it could be split between them.

It's important to understand what happens before, during and after a TUPE transfer, as well as [how your employer should inform and consult you](#).

4. Before the transfer happens

If you're transferring from one employer to another, your contract continues with your new employer. This is because your current employer is not ending your contract – it automatically transfers to the new employer on the transfer date.

Your current employer must provide your new employer with specific information about you. This is known as 'employee liability information' (ELI).

Your current employer must give this information to your new employer at least 28 days before you transfer.

Employee liability information includes:

- your identity
- your age
- your terms and conditions of employment
- any active disciplinary and grievance records, or ongoing cases, from the last 2 years

- any agreements between your employer and a trade union ('collective agreements') that affect your terms and conditions
- any claims related to your employment that you've made against your current employer in the last 2 years or that they believe you may make when you transfer

Some employers may ask for extra information, to make sure the information provided is correct. For example, your national insurance number.

If you do not want to transfer

You'll need to tell your current employer in writing if you do not want to transfer. They will treat this as if you're resigning.

It's a good idea to tell your employer early on so they can tell the new employer you will not transfer.

Your current employer may decide to offer you an alternative job. If they do and you accept, your length of service ('period of continuous employment') will continue if the new role starts before the date of the transfer. Your employer will tell the new employer you will no longer be transferring.

If they do not offer you an alternative job, your employment will end on the date the transfer takes place. If the transfer happens before your notice period ends, you will not need to work beyond the transfer date. You will not be paid for the remainder of your notice period.

When the transfer happens

On the date of the transfer, your new employer automatically takes over your [employment contract](#). This means your employment contract continues – you do not get a new one.

Your new employer must inform you in writing that there's been a change of employer.

Your length of service ('period of continuous employment') with your old employer will also transfer to the new employer. This means your start date is the same as it was before the transfer.

Your terms and conditions of employment

Your terms and conditions of employment automatically transfer to your new employer.

Terms and conditions of employment may include:

- pay, including any overtime pay
- contractual bonuses
- commission
- sick leave and pay
- holiday leave and pay
- allowances
- insurance-based benefits

The responsibility for paying outstanding wages or unpaid bonuses will transfer to your new employer.

Example

An employee is transferred to a new employer in January. Their old employer previously paid a performance-related bonus in March. Their new employer is now responsible for paying them the bonus.

Any outstanding holiday, arrangements to carry over holiday or 'enhanced' holiday (if you get more than the legal minimum) will also transfer.

Example

An employee's holiday year starts on 1 January and ends on 31 December. They have 10 days' holiday left when they transfer on 1 October. Their new employer must allow them to take this holiday before the end of their leave year, if the employee wants to.

If your new employer does not meet the terms of your employment contract, it's a breach of contract and you might be able to [make a claim to an employment tribunal](#).

Transferring your pension

Your pension built up to the date of the transfer is protected.

Whether your pension will transfer to the new employer will depend on if you have:

- a personal pension – a pension that you arrange yourself
- a workplace pension – a pension arranged by your employer

If you have a personal pension, your pension rights will automatically transfer to your new employer. This means your new employer must pay the same amount into your personal pension as before the transfer.

If you have a workplace pension, it's likely it will not transfer to your new employer as it is exempt from TUPE. This means your new employer does not have to continue the same pension. But they must provide a reasonable alternative scheme and match your contributions up to a maximum of 6%.

Some rights, such as early retirement terms and 'enhanced' redundancy pay (more than the legal minimum), may transfer to your new employer.

After the transfer happens

After a TUPE transfer, you might decide you do not want to work for your new employer.

If you do not want to work for your new employer

It will be treated the same as resigning and your employment will end.

You'll need to tell the new employer you want to resign in writing.

In these situations, you'll:

- usually need to work your notice period
- lose any continuity of employment under your current contract
- be paid any outstanding wages and holiday you've built up ('accrued') but not yet taken when your employment ends

You will not usually be entitled to any additional payments such as a redundancy payment or claim for unfair dismissal.

Find out more about:

- [resigning from your role](#)

- [working out your notice period and pay](#).

If you have not been told about a TUPE transfer

If you or your representatives have not been told about a TUPE transfer or given the name of the new employer, your employer has breached TUPE regulations. You may be able to [make a claim to an employment tribunal](#).

If you decide to make a claim, it should be as soon as you find out about the transfer. Employment tribunals may allow objections after the transfer to be heard.

After a TUPE transfer, employers can agree with employees to [change an employment contract following the usual process](#). But there are other things to consider if the main reason for changing the contract is the transfer.

5. If the main reason for a contract change is the transfer

Your new employer can only make changes because of the transfer if either:

- they improve your terms and conditions, for example your employer increases your holiday entitlement (annual leave)
- there is an 'economic, technical or organisational' (ETO) reason involving a change in the workforce, for example your organisation needs restructuring

TUPE regulations give some protection to your terms and conditions for an indefinite period. For example, if your new employer wants to change your terms and conditions 10 years later, they'd still need a valid reason for the change.

ETO reasons for contract changes

Your employer might want to change your employment contract because of an 'economic, technical or organisational' (ETO) reason. By law, they can agree this with you if there is also a change in the workforce, for example a restructure or redundancies.

ETO reasons include:

- essential cost-saving requirements (economic reasons)
- using new processes or equipment (technical reasons)

- making changes to the structure of an organisation (organisational reasons)

Example – a valid ETO reason for a contract change

Employees are transferred to the organisation WidgetCo under TUPE. WidgetCo is in a poor financial position and decides to sell its engineering division. It makes some redundancies to reduce costs and avoid becoming insolvent. The employer makes changes to the remaining employees' employment contracts to help the organisation deal with its financial difficulties. This is likely to be an ETO reason because there is a change in the number of the workforce.

Example – an invalid ETO reason for a contract change

A college has staff working to different sets of terms and conditions because of various TUPE transfers. They want all of their staff to be on the same terms and conditions. They decide to dismiss one employee and rehire them on less pay. This is not a valid ETO reason because there is no change in the workforce.

Improving terms and conditions to match those of existing staff

After a TUPE transfer, it's likely that you'll have different terms and conditions to the employees who already work for the new employer.

Your new employer may choose to 'harmonise' your terms and conditions (change them so you have the same as other employees). They can only do this if it improves your terms and conditions. They may choose to keep your terms and conditions the same as before.

Your terms and conditions cannot be changed to something worse than before, unless your new employer has a valid ETO reason.

Your new employer should make sure any differences in terms do not treat particular groups of employees unfairly. [Find out more about discrimination and the law.](#)

If the main reason for a contract change is not the transfer

If a contract change is unrelated to the transfer, TUPE regulations do not prevent you and your employer from making changes to your terms and conditions.

Your new employer may have valid reasons for agreeing contract changes with you. For example, if business needs have changed for reasons that do not relate to the

transfer.

You and your employer must agree to any changes and follow the usual process for [changing an employment contract](#).

Related content

[/changing-an-employment-contract](#)

You have your usual employee rights to a fair redundancy process in a TUPE transfer.

6. Before a TUPE transfer

Before the transfer, your current employer cannot make you redundant if your new employer asks them to. This would be considered an [unfair dismissal](#).

A redundancy consultation can start before the transfer if both your current and new employers agree. But you cannot be made redundant by the new employer before the transfer.

After a TUPE transfer

After you have transferred, your new employer can only make redundancies related to the transfer if there is both:

- a genuine redundancy situation
- a need to make changes to the workforce for economic, technical or organisational (ETO) reasons

For example, an ETO reason could be:

- a change in the location of work
- a reduction in the number of employees
- too many employees transferred in for the same role

If the reason for redundancies is not related to the transfer, your employer can make redundancies following the normal redundancy process and does not need an ETO reason.

If your new employer needs to make redundancies in your role or team, transferred staff must be treated in the same way as staff who've worked there longer. Your new

employer must follow correct redundancy procedures and apply fair selection criteria.

[Find out more about your rights during redundancy.](#)

Redundancy pay

If you're made redundant after a TUPE transfer, your new employer is responsible for any redundancy pay.

Your redundancy pay must be based on your length of service ('period of continuous employment'). This includes the time you worked for your old employer before you transferred.

If it's in your contract that you carried over, you'll also get 'enhanced' redundancy pay (more than the legal minimum amount).

[Find out more about redundancy pay.](#)

Redundancy consultation process

If you're an employee affected by redundancy, by law your employer must consult you. This is even if you're not at risk of redundancy yourself.

Your employer must also consult with a recognised trade union or employee representatives ('collective consultation') on ways to avoid or reduce redundancies if all of the following apply:

- they're planning 20 or more redundancies
- the redundancies are in 1 establishment – not necessarily in your organisation as a whole, which may be much larger
- they plan to make the redundancies within 90 days

If both your current and new employers agree, they can start collective consultation before the transfer. It must start at least 30 days before anyone is made redundant.

If they're making fewer than 20 redundancies, there is no fixed time period to consult you individually.

No employees can be made redundant until after the transfer.

Find out more about:

- [how your employer must consult you](#)
- [how to appeal a redundancy decision](#) – if you believe your employer has not consulted you fairly

Redundancy rights if you do not want to transfer

If you do not want to transfer to the new employer, you can refuse, but you would usually have no rights to claim:

- redundancy pay
- unfair dismissal

[Find out what to do if you do not want to transfer.](#)

Related content

[/your-rights-during-redundancy](#)

Your employer is insolvent if they cannot pay their debts.

Your rights will depend on the type of insolvency and whether the insolvency happened before or after your TUPE transfer.

If your employer is insolvent and the organisation is being rescued and transferred or taken over by a new owner, your rights will be protected under TUPE.

If the organisation is closing down, you will not be protected under TUPE.

An insolvency practitioner will be appointed to deal with the situation.

7. When the organisation is taken over – 'non-terminal insolvency'

If your old employer's organisation is sold as a going concern and stays in business, you will automatically transfer to the new employer with your existing terms and conditions. This includes your original start date, wages, holiday pay and pension contributions.

Your new employer or the insolvency practitioner could make changes to your employment terms and conditions, if this helps to protect your job by keeping the business going. But they would need to do this in discussion with your employee representatives.

Claiming for money owed if you transferred before the insolvency

If you were transferred before your old employer became insolvent, your new employer is responsible for any money you're owed, for example wages and holiday pay.

You cannot claim for compensation from the government's Redundancy Payment Service (part of the Insolvency Service).

Claiming for money owed if you transferred after the insolvency

If you were transferred to your new employer after your old employer became insolvent, you can claim some or all of the money they owe you from the Redundancy Payment Service. This includes:

- wages
- holiday pay
- commission
- bonuses

You will need to get a case reference number from your old employer's insolvency practitioner, before applying.

[Find out how to apply to the Redundancy Payment Service on GOV.UK.](#)

When the organisation is closed down – 'terminal insolvency'

You will not transfer to a new employer if your current employer:

- goes into 'liquidation' and closes down the organisation
- becomes bankrupt

Instead, you should be made redundant.

Find out more about:

- [your rights during redundancy](#)
- [your rights if your employer is insolvent on GOV.UK](#)