

Client Alert

January 31, 2014

TUPE Update

The UK Government has finalised the amendments to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) and collective redundancy legislation, under the Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 2014 (“TUPE 2014”). TUPE 2014 will be implemented on 31 January 2014 for transfers taking place on or, in some instances, after this date. The aim of 2014 is to simplify existing laws on TUPE transfers and collective redundancies and make it easier for employers to make organisational changes affecting employees or reduce the workforce. The key changes are summarised below.

Harmonisation of employment terms

“New” employers will have greater scope to harmonise terms and conditions of transferring employees from “old” employers, if:

- the contracts themselves authorise the variation;
- or the sole or principal reason for the variation is for an “*economical, technical and organisational reasons entailing changes to the workforce*” (“ETO”) and the employee agrees to the variation; or
- the terms are incorporated from a collective agreement and the variation takes place more than one year from the transfer and the varied terms are no less favourable overall for each relevant employee.

As many new employers harmonise the terms of transferring employees, these changes will be welcomed by employers who have previously had to manage the risk of a future challenge by an employee that a term was not validly varied by offering terms on a “whole package” basis.

Employee Liability Information to be provided earlier

For transfers taking place from 1 May 2014, Employee Liability Information must be provided by the old employer to the new employer at least 28 days before the employees transfer to the new employer. For transfers taking place before 1 May 2014, the time period is still 14 days before the transfer. Employee Liability Information under TUPE includes:

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- the identity and age of the employees;
- written employment terms;
- employment claims, employee disputes, disciplinary and/or grievance hearings arising within the last two years; and
- applicable collective agreements.

Introduction of “location changes” to allow fair dismissals

Dismissals because the new employer is based in a different location will be lawful under TUPE 2014. This will be consistent with the UK test of redundancy, allowing dismissals to be made fairly (but subject to a fair process being followed) where there is a change of workplace location.

Allowing the old employer to rely on the new employer’s ETO to make fair dismissals

Old employers will be allowed to dismiss assigned employees fairly where the reason relates to the new employer’s business reasons (for dismissals where notice is served on or after 31 January 2014). This will make the cost of redundancies, overall, cheaper for employers. It is likely that old employers will seek to negotiate reimbursement of these redundancy costs from the new employer as well as an indemnity for carrying out the redundancy process in the event of a claim from an employee or an employee representative.

Reducing collective redundancy consultation obligations

New employers will be able to rely on redundancy consultation carried out by the old employer before the transfer takes place, thereby reducing the period before which the new employer can start to dismiss affected employees. Together with the reduced collective consultation period for proposed redundancies of 100 or more employees in 90 days, from 90 to 45 days, these reforms will assist employers making headcount reductions more quickly in connection with business reorganisations and business sales.

Service provision changes clarified

TUPE 2014 clarifies that service provision changes will trigger the transfer of a service provider’s employees transferring to a new service provider where the activities carried on by the new service provider are “*fundamentally the same*” as those carried on by the old service provider.

Future changes to terms negotiated under collective agreements will not be applicable to new employers

A new employer will no longer have to implement future changes to employment terms negotiated under an old employer’s collective agreements which are not otherwise binding on the new employer.

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