

Facilities Management from A to Z

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UPE

One of the most significant pieces of legislation affecting the facilities management sector is the Transfer of Undertakings (Protection of Employment) Regulations 2006 more commonly known as TUPE. This means that on the sale of a business or on a change of service provider all contracts of employment and associated liabilities transfer by operation of law from the outgoing employer or service provider to the incoming employer or service provider.

In practice this means that where TUPE applies the new employer usually cannot change the transferred employees' terms and conditions even to match those of its existing employees. The question of exactly when TUPE does and does not apply can be a very complex one requiring specialist legal advice. Since April 2006, almost all service provision changes are now covered so that it is safe to assume that TUPE applies to outsourcing without the need for protracted legal argument.

People employed by the undertaking which is being transferred have their employment moved to the new employer. They can opt out or refuse to transfer but they can lose some of their employment rights if they do. The transfer includes all rights under the contract of employment, statutory rights and continuity of employment and includes an employees' right to bring a claim against their employer for unfair dismissal, redundancy or discrimination etc. Effectively, the new employer steps into the shoes of the old employer and it is as though the employee's contract of employment was always with them.

Facilities managers who are outsourcing a service for the first time will need to ensure that their organisation fulfils all of its duties and responsibilities to the transferring employee and makes full disclosure of the necessary information to the new employer. FM service providers are well experienced in TUPE matters. Where the FM is merely changing outsourced service provider the TUPE arrangements are between the two contractors and the FM should not interfere although will quite rightly seek reassurance that matters are being progressed in a proper manner.

A guide to the TUPE Regulations can be downloaded from the BIS website at

<http://www.berr.gov.uk/files/file20761.pdf>