

“ Plain speaking legal advice ”

**TUPE OR NOT TUPE**  
**Bringing a service in-house**

“ Plain speaking legal advice ”

Employers involved in the transfer of a business can be forgiven for being a little confused by the very complex legal rules that govern this practice.

Under TUPE 2006 (or giving its full title The Transfer of Undertakings (Protection of Employment) Regulations 2006) when a business or part of a business is transferred from one party to another then the employees of that business automatically transfer across with the same terms and conditions, and continuity of employment as before.

But employers should be aware as well, that the regulations apply to what are called service provision changes, so contracting out, contracting-in and re-tendering parts of the business also fall under the TUPE regulations.

For these workers to qualify for TUPE protection it's important that they are an 'organised grouping of employees'. They must be a dedicated team carrying out services on behalf of a particular client as their 'principal purpose'. If there is no such identifiable team and the contractor uses different employees each day or week to provide the service then TUPE will not apply.

So to give an example:

Example 1: Dan is an external IT engineer maintaining the computer systems of ABC Ltd. As well as maintaining ABC's systems he also maintains those of four other companies. So the principal purpose requirement is not satisfied, and he will not TUPE across to ABC if they decide to take the work in-house instead of employing external consultants.

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Example 2: Geoff is also an external IT engineer maintaining the computer systems of ABC Ltd. He only maintains ABC's systems and does not work for any other company. Geoff will therefore TUPE across to ABC.

It's clear from the above examples that the organised grouping of employees can include just a single employee.

What causes doubt is what is meant by 'principal purpose'. How much time must employees' spend on an activity to be their principal purpose? A recent decision of the Employment Tribunal found that a worker spending 70% of her time on one particular account did satisfy the 'principal purpose' requirement.

What's clearly excluded from TUPE are the supply of goods and one-off buying-in of services.

For further advice on TUPE matters please contact Ashley Holden at [ashley.holden@herrington-carmichael.com](mailto:ashley.holden@herrington-carmichael.com) or call 0118 977 4045

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Watchmoor Park  
Camberley  
Surrey  
GU15 3YL

tel: 01276 686222

4 Station Road  
Aldershot  
Hampshire  
GU11 1HU

tel: 01252 322451

3&4 Market Place  
Wokingham  
Berks  
RG40 1AL

tel: 01189 774045

[www.herrington-carmichael.com](http://www.herrington-carmichael.com)

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