

Transfer of employment – the IOM version of TUPE

Anyone familiar with English employment law will have heard the phrase TUPE, which is the fairly prescriptive regime that governs the transfer of employment in England and Wales. Whilst TUPE does not apply in the Isle of Man and there is no direct equivalent, there are rules in place which deal with transfers of employment relating specifically to the entitlement of employees to a redundancy payment.

The question generally arises where a business, or a part thereof, is sold. The former employer and the (potential) new employer must consider as part of the sale negotiations how any employees are to be dealt with. Usually we would expect to see a clause in the sale and purchase agreement for the business which deals with employees, and the liability for any employment related payments which may arise as a result of the transfer.

The Employment Act 2006 and the Redundancy Payments Act 1990 are the relevant pieces of legislation, and they set out when employees will be entitled to a redundancy payment where they are being transferred to a new employer.

Where any employees of the business are not being transferred, and there is no business remaining for them to be employed by, their employment will terminate by reason of redundancy, so they will be entitled to their notice period (either worked or paid in lieu, subject to the contract of employment) along with a redundancy payment calculated either using the formula within the Redundancy Payments Act 1990, or in line with their contract if the same includes a more favourable redundancy payment provision.

Where employees are to be transferred to the new business owner, it will be necessary to transfer them on materially the same contractual terms in order to avoid the need to make a redundancy payment or pay their notice period. Any transferring employees will be given a 4-week trial period with the new employer, after which the employee can either continue with the new employer or claim a redundancy payment from the old employer if they do not wish to continue with the new employer. If the employees are transferred on materially the same terms then this will be considered “suitable alternative employment” and the old employer will not be liable to make a redundancy payment. If the employment is not considered “suitable alternative employment” then the old employer will be liable to make a redundancy payment. Any employment with the new employer will be considered continuous employment, i.e. for the purposes of length of service, etc.

Of course no two business sales are the same and there will always be exceptions to the general rules set out above, so it is important to take early advice if you are considering a sale of your business which involves employees to ensure your legal responsibilities are dealt with and there are no surprise liabilities arising after the dust settles.

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