

# Post-Acquisition Integration Plan: TUPE

Although TUPE does not normally apply to share sales, it will apply if you integrate the acquired business into your own, whether this is immediately following completion or at some point further down the line. When TUPE applies will depend on the integration process and what is moving over and when – TUPE may apply immediately, at a point during the integration process or on the date on which the employees' employer actually changes.

There is no strict rule to determine when TUPE will apply - it will depend on the nature of the changes that you are making. As such, it is important to consider your Post-Acquisition Integration (PAI) plan and how it will impact on employees before starting to make any changes.

As part of your plan, you will need to consider the overall aims and objectives of your PAI plan. If the intention is to achieve full integration of the business and employees, open and transparent communication is key, both from a legal and ER perspective. The sooner employees know about the integration plans and become involved in the process, the more likely they are to feel engaged, helping to build relationships to ensure a smooth transition as well as minimising legal risk.

## Factors to consider

The main question is when can it be said that the new business is operating more as part of your business rather than a business on its own? This may not be a clear point in time but will depend on looking at the overall business and determining when the scales are tipped. Of course, this is not easy to do, so the sooner that employees are consulted about proposed changes to the way that they work, the less likely they are to feel disenfranchised, and legal and practical risk will be minimised.

Factors to consider when looking at whether the scales will be tipped - the weight or importance to attach to any of the factors will vary according to the nature of the business:

- Organisation design – changes to team structure, reporting lines, performance processes
- Transfer of tangible assets, such as building, vehicles, movable property
- Transfer of leases and/or change to employees' location
- Changes to marketing and branding
- Changes to domain names and email addresses
- Transfer of IT and operational platforms
- Transferring customer contracts
- Regulatory changes (registration with FCA, ICO etc)
- Changes to employment contracts or other terms
- Payroll and pension changes
- Changes to core HR policies

## Legal and financial risk

Failing to comply with your information and consultation duties under TUPE could result in each impacted employee being awarded up to 13 weeks' gross pay as compensation (approximately a ¼ of the payroll), as well as potential ER and reputational issues, so it is important to get it right.