1. Policy

Universal Support Services Group (USSG) Ltd (USSG' &/or 'the company') is committed to providing services of the highest quality that are efficient, responsive and client focused. The Transfer of Undertakings (Protection of Employment), commonly known as TUPE is an integral part of our business when it comes down to employee issues and one in which we feel we lead the way.

USSG accepts that staff is protected by the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014" and believes that the information and consultation requirements of TUPE should be followed scrupulously. As such when a TUPE takes place USSG will consult with staff and their representatives and wholly support them through the transition of change.

Where TUPE applies USSG is committed to working with the outgoing employer, the transferring employees, and all representatives of the transferring employees, to ensure that the benefit of all existing terms and conditions of employment by the transferring employees protected by TUPE are honored by USSG.

USSG believes that full, effective, and continuous consultation is the key to the successful management of a transfer. Consultation should begin at the earliest opportunity and should continue after the transfer to ensure the proper dissemination of information is being achieved. USSG aim is to work with the client to provide a modernized, high quality, efficient and client focused service. USSG recognizes that the skill and commitment of staff are amongst its best assets in providing a service that is one of the best in the service industry.

2. A guide to the regulations

This brief describes the purpose of the TUPE regulations, what is covered by the regulations, the employer and employee position in a transfer, redundancy, and union recognition.

TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014". The TUPE rules apply to organizations of all sizes and protect employees' rights when the organization or service they work for transfers to a new employer (Ref. acas.org.uk).

3. Purpose

The TUPE Regulations preserve employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer. Any provision of any agreement (whether a contract of employment or not) is void so far as it would exclude or limit the rights granted under the Regulations.

4. The Regulations have the effect that:

Employees employed by the previous employer when the undertaking changes hands automatically become employees of the new employer on the same terms and conditions. It is as if their contracts of employment had originally been made with the new employer. Thus, employee's continuity of employment is preserved, as are their terms and conditions of employment under their contracts of employment (except for certain occupational pension rights). Representatives of employees (i.e., the TSSA) affected have a right to be informed about the transfer. They must also be consulted about any measures which the old or new employer envisages taking concerning affected employees.

5. Transfers covered by the Regulations

The Regulations apply when an undertaking or part of an undertaking is transferred from one employer to another.
Some examples of transfers are:

- Where all or part of a sole trader's business or partnership is sold or otherwise transferred.
- Where a company, or part of it, is bought or acquired by another, provided this is done by the second company buying or acquiring the assets and then running the business and not acquiring the shares only.
- Where two companies cease to exist and combine to form a third.
- Where a contract to provide goods or services is transferred in circumstances which amount to the transfer of a business or undertaking to a new employer.

The Regulations can apply regardless of the size of the transferred undertaking. Thus, the Regulations equally apply to the transfer of a large business with many thousand employees or of a very small one (such as a shop, pub, or garage) and apply equally to the public or private sector.

6. Transfers not covered by the Regulations

The Regulations do not apply to the following:

- Transfers by share take-over because, when a company's shares are sold to new shareholders, there is no transfer of the business - the same company continues to be the employer.
- Transfers of assets only (for example, the sale of equipment alone would not be covered, but the sale of a going concern including equipment would be covered)
- Transfers of a contract to provide goods or services where this does not involve the transfer of a business or part of a business.
- Transfers of undertakings situated outside the United Kingdom.

Those provisions of the Regulations which relate to dismissal of employees because of the transfer, the duty to inform and consult representatives and the failure to inform and consult them as required, do not apply to employees who, under their contracts of employment, normally work outside the United Kingdom.

7. Employer's position in a transfer

Under the Regulations, when an undertaking is transferred the position of the previous employer, and the new employer is as follows:

- The new employer takes over the contracts of employment of all employees who were employed in the undertaking immediately before the transfer, or who would have been so employed if they had not been unfairly dismissed for a reason connected with the transfer. An employer cannot just pick and choose which employees to take on.
- Appropriate staff will be fully screened by the new employer according to the guidelines of British standard BS7858: Current version.
- The new employer takes over all rights and obligations arising from those contracts of employment, except criminal liabilities and rights and obligations relating to provisions about benefits for old age, invalidity, or survivors in employees' occupational pension schemes.
- The new employer takes over any collective agreements made on behalf of the employees and in force immediately before the transfer.
- Neither the new employer nor the previous one may fairly dismiss an employee because of the transfer, or a reason connected with it, unless the reason for the dismissal is an economic, technical, or organizational reason entailing changes in the workforce. If there is no such reason, the dismissal will be unfair. If there is such a reason, and it is the cause or main cause of the dismissal, the dismissal will be fair provided an employment tribunal decides that the employer acted reasonably in the circumstances in treating that reason as sufficient to justify dismissal. If, in this case, there is a redundancy situation, the usual redundancy procedures will apply.
- The new employer may not unless the contract of employment so provides unilaterally worsen the terms and conditions of employment of any transferred employee.
- The previous and new employers must inform and consult representatives of the employees.

8. Employees' position in a transfer

When an undertaking is transferred the position of the employees of the previous or new employers is as follows:

An employee claiming to have been unfairly dismissed because of a transfer has the right to complain to an employment tribunal.

Transferred employees who find that there has been a fundamental change for the worse in their terms and conditions of employment because of the transfer generally have the right to terminate their contract and claim unfair dismissal before an employment tribunal, on the grounds that actions of the employer have forced them to resign.

Employees may not make this type of claim solely on the grounds that the identity of their employer has changed unless the circumstance of an individual case change and that change is significant and to the employee's detriment.

In both the above cases dismissal because of a relevant transfer will be unfair unless an employment tribunal decides that an economic, technical, or organizational reason entailing changes in the workforce was the main cause of the dismissal and that the employer acted reasonably in the circumstances in treating that reason as sufficient to justify dismissal. Even if the dismissal is considered fair, employees may still be entitled to a redundancy payment.

Employees employed in the undertaking immediately before the transfer (or who would have been so employed had they not been unfairly dismissed) for a reason connected with the transfer automatically become employees of the new employer unless they inform either the new or the previous employer that they object to being transferred. In this case the contract of employment with the previous employer is terminated by the transfer of undertaking but the employee is not dismissed.

The previous employer may re-engage the employee.

An employee's period of continuous employment is not broken by a transfer, and, for the purposes of calculating entitlement to statutory employment rights, the date on which the period of continuous employment started is the date on which the employee started work with the old employer. This should be stated in the employee's written statement of terms and conditions; if it is not, or if there is a dispute over the date on which the period of continuous employment started, the matter can be referred to an employment tribunal.

Transferred employees retain all the rights and obligations existing under their contracts of employment with the previous employer and these are transferred to the new employer, with the exception that the previous employer's rights and obligation s relating to benefits for old age, invalidity or survivors under any employees' occupational pension schemes are not transferred. If the new employer does not provide comparable overall terms and conditions, including pension arrangements, an employee may have a claim for unfair dismissal.

Occupational pension rights earned up to the time of the transfer are protected by social security legislation and pension trust arrangements.

9. Redundancy

Dismissed employees may be entitled to redundancy payments. Employers must also ensure that the required period for consultation with employees' representatives is allowed. Entitlement to redundancy payments will not be affected by the failure of any claim which an employee may make for unfair dismissal compensation. Where there are redundancies and it is unclear whether the Regulations apply, it will also be unclear whether the previous or the new employer is responsible for making redundancy payments. In such cases employees should consider whether to make any claims against both employers.

10. Trade Union recognition

If the transferred undertaking maintains an identity distinct from the remainder of the new employer's business, the new employer will be considered to recognize an independent Trade Union, in respect of employees transferred, to the same extent that it was recognized by the previous employer. If the undertaking does not keep its separate identity, the previous Trade Union recognition lapses, and it will then be up to the union and the employer to renegotiate recognition.

The Managing Director shall review this policy annually and/or following significant changes.

This Policy document has been approved by the USSG Managing Director

Mr M M Rashid Baig

Mr M M Rashi Baig
Managing Director

This policy is reviewed as per the Header