

I Am Buying a Business (Not the Shares in a Company) and TUPE Applies – What Are My Pension Obligations?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) sets out the employment protection that must be provided in respect of transferring employees. The general principle is that all contractual employment rights will transfer. In a pensions context, what has to be provided in respect of transferring employees will depend upon whether the transferring employees are in a personal pension plan (usually a plan provided by an insurance company) and which by its nature is contractual, or an occupational pension plan (a plan that has been set up under trust). Note that a group personal pension plan (GPP) is a **personal** pension arrangement.

We have illustrated the basic TUPE (and Pensions Act 2004) principles in respect of pension provision on the transfer of employees in the table below.

	Personal Pension	Occupational Pension
Am I obliged to replicate existing pension benefits?	Yes	No
What type of pension plan must I offer?	Same as the former employer's plan	Occupational plan or stakeholder plan (note that the inclusion of a stakeholder plan is a hangover from previous legislation, which still applies in this context)
What employer contribution rate must I pay?	Same as the former employer's contribution rate	Matching employee contributions up to 6% <i>or</i> Matching the former employer's contribution rate (whichever you prefer)
Can I offer a different pension plan to the type of pension that you have stated I am required to offer after the transfer?	No – Although note that in practice and for convenience many employers do offer a different pension post transfer. Employees are unlikely to complain provided the contribution rates and charging structures are the same	Yes, if each employee agrees
Which employees must I offer pension arrangements to?	All employees in a pension plan to which the former employer contributes plus employees with a contractual entitlement to join or who are in a waiting period	All employees in a pension plan to which the former employer contributes plus employees with a contractual entitlement to join or who are in a waiting period
	See also the additional requirements to comply with automatic enrolment legislation, set out in the table below	
Do any other pension rights (such as pension rights on redundancy) transfer?	Yes	Yes (but the requirements are complex, so take advice)
Must I still provide those other pension rights if I don't have a suitable pension plan?	Yes	Yes
Do lump sum death benefits provided under the plan transfer?	Yes	No
Do lump sum death benefits provided contractually through a separate plan transfer?	Yes	Yes

Do I Also Need to Automatically Enrol All Transferring Employees?

If an employee is already in a pension plan then you should follow the TUPE principles set out in the table above. Practically speaking, there is no need to assess the employee for automatic enrolment purposes provided you put him or her straight into a plan that meets the TUPE obligations and which is also a “qualifying workplace pension” for automatic enrolment purposes (i.e. which meets the criteria set out in legislation).

You should issue a notice to the employee confirming that he or she is in a qualifying workplace pension plan.

If an employee is not already in a pension plan then you will need to assess him or her for automatic enrolment purposes as you would with any new employee.

My Transferring Employees Are Former Public Sector Employees – Does TUPE Still Apply?

Yes – TUPE will still apply but there is also an additional layer of protection that usually needs to be provided. The extent of the protection to be provided will vary depending upon the contractual terms of the transfer and which pension plan the employees were members of. This area is fairly complex, so take advice.

Automatic Enrolment and TUPE – Quick Summary:

Employees in pension plan	Apply TUPE Put into a qualifying workplace pension plan
Employees not in pension plan	Apply TUPE Assess for pensions automatic enrolment

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