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Introduction

**Introduction** [pages 5-6] (745 words)

The Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) were introduced to protect the rights of employees on the transfer of...

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Chapter 1

**1. OVERVIEW OF THE TUPE REGULATIONS** [ch 1: page 7] (199 words)

The Transfer of Undertakings (Protection of Employment) Regulations 1981 were originally introduced in 1981 to comply with the European Union...

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**TUPE in summary** [ch 1: pages 7-8] (245 words)

**How do employment tribunals interpret TUPE?** [ch 1: page 8] (478 words)

**When does TUPE apply?** [ch 1: page 9] (81 words)

**Consultation and collective rights** [ch 1: page 9] (200 words)

**How does TUPE affect terms and conditions?** [ch 1: pages 9-10] (115 words)

Changes to terms and conditions [ch 1: page 10] (105 words)

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Chapter 1

How do employment tribunals interpret TUPE?

The purpose of the EU Acquired Rights Directive is to protect the rights of employees on a transfer and to create a basic floor of minimum rights, so that businesses are not forced to compete by lowering worker protection in a “race to the bottom.”

To the extent that TUPE is based on the Acquired Rights Directive, tribunals are expected to take a broad “purposive” (as opposed to literal or restrictive) approach to interpreting the regulations, with the aim of achieving the Directive’s core purpose of safeguarding employees. Where wording is unclear, tribunals should choose the interpretation that best achieves this purpose, even adding or eliminating wording in the regulations where necessary (Glasier v Firth Dry Dock and Engineering Co Limited [1998] ICR 341; VSIAW v Effel Austin Limited [2013] UKEAT 0547/12/0005).

Public sector employees who bring a tribunal claim can choose between relying on TUPE or alternatively on the Directive itself. This is known as “direct effect”. The direct effect of TUPE was established in North Wales Training and Enterprise Council v National Girobank [1994] IRLR 300 and the effect of the Directive in North Wales Training and Enterprise Council v National Girobank (No 2) [1994] IRLR 543.

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