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A business may change hands in two distinct ways: a transfer of the business from one company to another or an acquisition of the shares of a company. In each case the employees have a level of employment protection, but it may be different depending on the situation.

The more usual is TUPE (Transfer of Undertakings Protection of Employment Regulations 2006). It is well known that TUPE offers protection to employees when a business entity is transferred from one owner to another and each member of staff should transfer to the new business with their terms and conditions of employment intact.

However, it may be that the business entity is not changing and a new investor is buying shares in the company. The company continues to trade as it always did but a new person or parent company is receiving the profits.

For example, Liverpool buys out Everton and makes one team, now called Liverpool United. This would involve TUPE and the Everton players would transfer to the new team with their terms and conditions intact. The other option is that the owner of Liverpool also buys Everton and fields two teams into the Premiership. Everton is still the same team and carries on as it did before but under new ownership.

In a TUPE transfer the regulations protect the employees while the transfer is happening and then the new owner needs to show an economic, technical or organisational reason if they need to make staff redundant.

In the share sale scenario the employee is protected by the Employment Rights Act (ERA) 1996 and any dismissal must be for one of the six potentially fair reasons: incapability; misconduct; redundancy; retirement; contravention of a statutory provision; or SOSR (some other substantial reason). In this situation the board may change, but essentially everything should continue as before and staff should not be affected.

The new board may have a different management style and may wish to centralise some services within the group of companies, but these changes could, of course, happen to any business at any time and are likely to involve redundancies. If this happens and there is no TUPE situation the pool of workers for redundancy is only made up from the company employees, whereas under a TUPE situation the pool would be both sets of employees.

For existing employees in the company, they would have the normal protection of existing employment legislation, particularly the ERA 1996, so providing they have 12 months service they would have jurisdiction at the Employment Tribunal for unfair dismissal claims.

It would be wrong to assume, however, that a share acquisition will be the easier option and a way to avoid TUPE. If the purchaser of the shares is happy to sit back and watch his money grow as the company prospers it is unlikely that TUPE will be an issue. However, if he wants to take control, manage and change the business not following the TUPE regulations could land the purchaser with an unexpected expense and some serious litigation. i•®

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