

RIGHTS FOR OUTSOURCED WORKERS

Risks of Brexit

Introduction

When businesses change hands or organisations decide to outsource or privatise services, this can cause huge uncertainty and insecurity for working people.

Contracting out has always been associated with growing low-pay and increased workplace poverty. EU law – which takes the form of the TUPE Regulations in the UK – provides key rights for outsourced or transferred workers, including safeguards for pay and conditions and protection from dismissal.

EU protects individuals affected by outsourcing and privatisation

Before the 1980s, UK workers had very few rights where a company, or part of a company was sold to a new owner, or services such as cleaning or catering, were outsourced or privatised. The entire workforce would generally be dismissed, with redundancy pay if they were lucky. Some staff might have been offered a job with the new firm, but there was nothing to prevent the new employer from paying them less.

The TUPE Regulations protect employees' pay and wider contractual rights when a business is transferred from one owner to another. Under these rights, staff automatically become employees of the new employer on the same terms as they were on before. Employers' ability to reduce their pay and conditions is seriously limited. Employers also cannot decide to move staff off from permanent, secure jobs and onto zero-hours contracts.

TUPE rights can also assist unions to organise and represent outsourced workers. Union reps have the right to be consulted in advance about the transfer and proposed changes to working conditions and union recognition also often transfers to the new employer.

TUPE rights have benefitted millions of people with the government estimating that 910,000 employees experience a TUPE transfer every year. TUPE rights have proved particularly important for service sector

staff, many of whom are low paid women and BME workers including those working in cleaning, catering and security.

EU LAW STOPS EMPLOYERS FROM DISMISSING STAFF AND DRIVING DOWN PAY AND CONDITIONS

Court rulings mean that it is difficult for employers to get around TUPE rights by sacking workers in advance. In one case, an insolvent company laid off the workforce before the business was sold. A group of new employees had been lined up on lower pay. UK regulations said individuals only had TUPE rights if they were employed 'immediately before the transfer'. But the House of Lords decided that the UK rules should be interpreted in way which was consistent with the aims of the EU Directive. The employer therefore had to compensate the employees.

In another case, the European Court of Justice decided that employers could not reduce pay and conditions if the reason was linked to the transfer – even if staff had agreed to the change. Thanks to this important judgement, employers cannot pressure employees into accepting to worse pay and conditions after a transfer.

Risks of Brexit

If the UK votes for Brexit, it is likely that all EU-guaranteed rights will be reviewed and many will be vulnerable to repeal or dilution. Those campaigning for Brexit have often called for rights which restrict employers' flexibility to be scrapped. TUPE rights are controversial with some employers as they interfere with commercial choices and limit the ability of employers to compete by paying lower wages.

Following pressure from employers and some of those now campaigning for Brexit, TUPE rights have already been weakened by the UK government. In 2013, UK law was changed to permit employers to renegotiate collective agreements which cover outsourced workers. But this has not satisfied those demanding reform. The UK government and the CBI have repeatedly called for EU rules to be further watered down so that employers can reduce pay and conditions after a transfer.

If the UK voted for Brexit and TUPE rules were ripped up, it would be easier for employers to drive down pay and conditions in a 'race to the bottom'. There would also be nothing to stop employers from offering outsourced staff insecure jobs, including zero-hours contracts. It would also be quicker and cheaper for the government to privatise the key public services on which our society relies. To date, governments have been stopped from taking these steps thanks to the EU Directive.

For more information go to www.tuc.org.uk/euref

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