

Acquiring a workforce – the key considerations

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Acquiring a new workforce through merger or acquisition can be challenging and fraught with legal complexity. In this article we look at some of the key challenges:

1. **The Transfer of Undertakings Regulations (TUPE)** provide legal protection to employees who transfer from one employer to another. If TUPE applies then the incoming employees have the right to be employed on their old terms and conditions and with their continuity of service intact. That means that you may be inheriting substantial liabilities, for example in relation to redundancy payments.
2. **Harmonisation of terms.** When a business acquires a workforce, it will often want to 'harmonise' the terms and conditions of all employees, to ensure that both existing and any incoming employees are on the same t&cs. However, under TUPE, any such contractual changes may be void if the principal reason for them is the transfer. There are limited exceptions - for example where the changes are made for an 'economic, technical or organisational reason'.
3. **Other issues:**
 - a. changes in ownership can create uncertainty and anxiety which can lead to reduce morale and productivity. It is therefore essential to create clear lines of communication so that any staff concerns can be addressed and hopefully allayed;
 - b. inheriting a workforce can also involve inheriting problems. The acquiring business will need to be satisfied that it has in place robust policies and access to HR advice so that such issues can be dealt with;
 - c. businesses often give insufficient thought to how different corporate cultures can be merged. Planning, effective communication and the involvement of employees in the process from the outset are particularly important.

