

Best Practice Guidance for TUPE transfers agreed between NHS Organisations in the NHS Employers' East Midlands Region

1. Background and Purpose

1.1 Tendering processes often result in TUPE transfers being required between NHS organisations within the East Midlands' region.

1.2 This Best Practice Guidance sets out key principles which all organisations in the region agree to in principle in order to ensure staff are not disadvantaged when moving from one organization to another, and that the regional redundancy liability is mitigated rather than this being considered organizationally only.

2. Scope

2.1 This document sets out how TUPE transfers between NHS trusts in the NHS Employers' East Midlands region will be approached by way of presenting a 'best practice' approach.

3. Principles

3.1 At the point of a tender being awarded, which involves a TUPE transfer of staff, the organisations involved will meet to discuss any proposed changes to the workforce which will need to happen in order to implement the tender. This engagement should take place as soon as the tender is awarded.

3.2 There will not be protracted discussions about whether TUPE applies or does not as this is not in the best interests of the public purse. Early legal advice should be sought and agreement reached.

3.3 There will be early involvement and engagement on workforce issues with all relevant recognised Trade Unions and joint meetings held to discuss potential workforce issues wherever possible. Employers note that sometimes commissioning decisions promoting TUPE transfer leave little time for engagement, but where this is possible, it will be prioritized.

3.4 There will be early and regular communication with employees from all organisations affected as soon as the TUPE is agreed.

3.5 Organisations will work together and with recognised Trade Unions to ensure that employees from each organisation have equal opportunity in any future workforce model, where appropriate. This could include agreeing that workforce changes are made pre-TUPE with agreement of all parties to avoid one NHS workforce being advantaged over another.

3.6 In the case described above, early agreement will be reached between organisations and recognised Trade Union colleagues on the management of change process that will be followed. Reference to each organisations' management of change policy should be made. The ethos of any agreement will be that staff from one organization will not be unfairly disadvantaged compared to another (for example, in the scenario where posts are being reduced, all staff have equal opportunity for each vacancy). The Redeployment of staff in the Midlands and East of England Memorandum of Understanding (Appendix 1) should take priority when dealing with redeployment situations.

3.7 The transferee organisation will lead on managing the proposed changes at the relevant time and will ensure any practical arrangements are made and communicated to affected parties.

3.8 The transferee will lead on communicating the effects of any changes on employees in conjunction with and with the input from the transferor. Recognised Trade Union colleagues will also be asked for input, where appropriate. Joint meetings with staff may be held, where appropriate.

3.9 All organisations involved will ensure their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 are met.

3.10 Due diligence information ideally should be provided 40 days before the proposed transfer, if not before that. This will ensure smooth transfer of staff. It is recognized that not all circumstances allow for this best practice, and in those cases the legal requirement of 28 days will be adhered to.

3.11 Where possible, staffing issues such as disciplinaries and grievance should be resolved by the transferring organization prior to transfer.

3.12 All Trusts will use the same template for providing due diligence information which is attached as Appendix 2.

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