



Bulletin 135

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Transferee Beware: Collective Agreements can be binding even after the transfer

Employers taking on staff via a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, are being advised to take notice of a recently published EAT judgment, in the *Alemo-Herron -v- Parkwood Leisure* case.

The decision is authority that an employer who has taken on staff under a TUPE transfer, can still be bound by pay increases negotiated by the former employer under a collective agreement, even when the negotiation takes place after the transfer has occurred.

Previously, the European Court of Justice had taken the view that employers receiving employees via a TUPE transfer were not bound by contractual amendments negotiated post-transfer between the previous employer and union under a collective agreement. However, the judges in the *Alemo-Herron* case decided that the UK was entitled to interpret the law, in relation to TUPE, more favourably towards employees than European Law.

This case will be particularly relevant to employees transferred to the private sector from the public sector where the terms and conditions are often negotiated collectively.

The EAT gave permission to appeal to the Court of Appeal and an appeal has been lodged.

👉 Practical Tip

This case underlines the need for thorough due diligence prior to a transfer of employees to ensure that all liabilities, including the potential impact of any relevant collective agreement, are properly identified. Enquiries will have to be made about the existence of any relevant collective agreements in respect of all transfers in case there is a collective agreement which will continue to operate post transfer (because part of the bargaining unit remains with the old employer). In such cases, the transferred employees may argue that the new employer is obliged to honour any terms that are negotiated under the old employer's agreement.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

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