

# **Employment Risk Matrix**

## Assessment of the Secondment, TUPE Plus and TUPE Employment Models

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## Contents

Introduction to Employment Risk Matrix

Employment Risks in Secondment, TUPE Plus & TUPE transfer models

Appendix: TUPE plus

Amended March 2010 to include TUPE Plus.



(Continuing the work of the Centre for Public Services)

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## Introduction to the Employment Risk Matrix

Outsourcing via a transfer of staff effectively means that the employer is transferring a series of risks to their existing staff. TUPE transfers and the Best Value Code of Practice on Workforce Matters do not provide any guarantees. There is considerable change occurring in the pensions sector with private sector employers replacing final salary with money purchase schemes and a growing number of under-funded pension schemes.

There are basically three employment models if outsourcing or transfer is proposed:

- 1) Secondment in which staff remain employed by the public sector.
- 2) TUPE Plus transfer to a new employer (see Appendix).
- 3) TUPE transfer to a new employer.

The European Services Strategy Unit has devised an Employment Risk Matrix, which assesses the degree of changes in four categories of risk:

- Risk of changes to terms and conditions of service.
- Pensions arrangements (not covered by TUPE regulations but included in TUPE Plus agreement).
- Risk of changes to staff consultation and representation.
- Risk of problems with secondment agreement.

The Risk matrix identifies and compares the levels of risk borne by employees in secondment, TUPE Plus transfer and TUPE transfer employment models.

The Employment Risk Matrix Summary (Table 1) shows;

- **Secondment - 100% of the risks are in the none/low risk category.**
- **TUPE Plus transfer – 92% of risks are in the none/low risk category**
- **TUPE transfer - only 16% of risks are in the none/low risk category.**

**Alternatively, 84% of the risk for employees in a TUPE transfer are in the high and medium risk categories compared with only 8% for a TUPE Plus transfer and none for secondment.**

Table 1: Summary of Employment risk

Risk level	Secondment		TUPE PLUS Transfer		TUPE Transfer	
	Number	%	Number	%	Number	%
None	9	36	6	24	3	12
Low	16	64	17	68	1	4
Medium	0	0	2	8	11	44
High	0	0	0	0	10	40
Total	25	100	25	100	25	100

European Services Strategy Unit, 2010.

## Employment Risks in Secondment, TUPE Plus and TUPE Models

Risk	Secondment	TUPE PLUS Transfer	TUPE Transfer
<b>Risk of changes to terms and conditions of service</b>			
<b>Risk of changes to staffing levels after transfer without staff agreement.</b>	<b>No risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> Contract and Code of Practice on Workforce Matters should prevent it happening.	<b>High risk</b> Code of Practice on Workforce Matters does not prevent changes over time.
<b>Risk of changes to terms and conditions of employment.</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> Contract and Code of Practice on Workforce Matters should prevent it happening.	<b>High risk</b> Code of Practice on Workforce Matters does not prevent changes over time.
<b>Risk of not meeting annual pay award in full and on time</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> Contract and Code of Practice on Workforce Matters should prevent it happening.	<b>Low risk</b> Code of Practice on Workforce Matters should prevent it happening.
<b>Risk of changes to the composition of pay and benefits such as holidays</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> Contract and Code of Practice on Workforce Matters should prevent it happening.	<b>High risk</b> Code allows contractor to change mix of pay, holidays and pension.
<b>Risk of two-tier workforce developing</b>	<b>Low risk</b> only if large differences between transferees and seconded staff develop	<b>Low risk</b> new starters on same terms and agreement not to operate two-tier workforce	<b>High risk</b> staff on different terms and conditions could create two-tier workforce
<b>Risk of no or inadequate redeployment</b>	<b>Low risk</b> commitment to redeployment	<b>Medium risk</b> dependency on resources of private contractor, therefore staff bear the risk	<b>High risk</b> dependency on resources of private contractor, therefore staff bear the risk
<b>Risk of inadequate implementation of family friendly policies</b>	<b>Low risk</b> commitment to family friendly policies	<b>Low risk</b> contract commitment to family friendly policies	<b>Medium risk</b> dependency on private contractors policies

<b>Risk</b>	<b>Secondment</b>	<b>TUPE PLUS Transfer</b>	<b>TUPE Transfer</b>
<b>Risk of changes to pensions</b>			
<b>Risk of not remaining in Local Government Pension Scheme</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> agreement to remain in LGPS but contractor could seek to amend	<b>Medium risk</b> requires public sector to make it a condition of contract
<b>Risk of changes to quality and conditions of private company pension scheme</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>No risk</b> agreement to remain in LGPS	<b>Medium risk</b> Code is 'permissive' with regard to defined benefit/final salary scheme
<b>Risk of reduction in employer contribution and increase in employee contribution</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>No risk</b> agreement to remain in LGPS	<b>Medium risk</b> Code is 'permissive' with regard to defined benefit/final salary scheme
<b>Risk of closure of final salary scheme by private sector employer</b>	<b>No risk</b> staff remain on local authority terms and conditions	<b>No risk</b> agreement to remain in LGPS	<b>Medium risk</b> Code is 'permissive' with regard to defined benefit/final salary scheme
<b>Risk of changes to workplace conditions</b>			
<b>Risk of changes to trade union facility time</b>	<b>Low risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> guarantee that TUPE lasts for length of contract	<b>Medium risk</b> of private contractor demanding or imposing a reduction
<b>Risk of changes to health and safety policies and practices</b>	<b>Low risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> contract commitment to health & safety	<b>Medium risk</b> based on private contractor health and safety practice
<b>Risk of changes to grievance and disciplinary procedures</b>	<b>Low risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> guarantee that TUPE lasts for length of contract	<b>High risk</b> private sector has own procedures.
<b>Risk of changes to equal opportunities policies and practices</b>	<b>Low risk</b> staff remain on local authority terms and conditions	<b>Low risk</b> Contract commitment to equalities	<b>Medium risk</b> in terms of degree of implementation.
<b>Failure to implement corporate policies and priorities</b>	<b>Low risk</b> some corporate policies not fully implemented.	<b>Low risk</b> some corporate policies not fully implemented.	<b>Medium risk</b> some corporate policies not fully implemented.
<b>Risk of loss of public service ethos</b>	<b>Low risk</b> staff remain council employees.	<b>Medium risk</b> staff will be private sector employees.	<b>High risk</b> staff will be private sector employees.

<b>Risk</b>	<b>Secondment</b>	<b>TUPE PLUS Transfer</b>	<b>TUPE Transfer</b>
<b>Risk of changes to staff consultation and representation</b>			
<b>Risk of lack of consultation with staff over improvement plans and reengineering proposals</b>	<b>Low risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> commitment to involvement	<b>Medium risk</b> based on experience of PPP and outsourcing contracts
<b>Risk of lack of consultation with staff in other departments</b>	<b>Low risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> commitment to involvement	<b>Medium risk</b> based on experience of PPP and outsourcing contracts
<b>Risk of changes to working practices which have not been agreed with staff and trade unions</b>	<b>Low risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> commitment to involvement	<b>High risk</b> based on PPP and outsourcing contracts.
<b>Risk of inadequate training</b>	<b>Low risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> contract commitment to workforce development and training	<b>High risk</b> based on PPP and outsourcing contracts.
<b>Risk of changes to the industrial relations framework</b>	<b>Low risk</b> because of Change Control Procedure in Secondment Agreement	<b>Low risk</b> contract commitment to TUPE for length of contract	<b>High risk</b> based on PPP and outsourcing contracts.
<b>Risk of problems with secondment agreement</b>			
<b>Risk of secondment agreement failing</b>	<b>Low risk</b> based on experience in other parts of the public sector	<b>No risk</b> not applicable	<b>No risk</b> not applicable
<b>Risk of legal challenge to secondment agreement re TUPE</b>	<b>Low risk</b> based on experience in other parts of the public sector	<b>No risk</b> not applicable	<b>No risk</b> not applicable
<b>Risk of contractor seeking to reduce or terminate secondment</b>	<b>No risk</b> not applicable	<b>No risk</b> not applicable	<b>No risk</b> not applicable

European Services Strategy Unit, 2010.

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## Appendix

### TUPE Plus

The limitations of TUPE are widely recognised and this has led to the promotion of TUPE Plus. For example, Newcastle City Council's Corporate Procurement Strategy has TUPE Plus as a basic requirement in service contracts.

TUPE Plus contains the following fair employment policies:

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within the Local Government Pension Scheme.
- Annual local government pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the Council's employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the Council.
- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work and not to transfer jobs out of the local authority area.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- Contractors will be required to make a contribution to the Council's Corporate facility time budget to ensure transferred employees continue to receive support from trade union branches.
- The Council must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.