

Does TUPE work for workers?

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Dewhurst and others v Revisecatch Limited and Citysprint (UK) Limited

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The definition of employee under TUPE includes: *“any individual who works for another person whether under a contract of service or apprenticeship or otherwise”* but goes on specifically to exclude those who provide services *“under a contract for services”*. The ET was asked to make findings as to whether workers were included or excluded in this definition by the words *“or otherwise”*.

The ET referred back to the Acquired Rights Directive definition of employee which includes anyone who is protected under the relevant national law as an employee. In the UK, we have various definitions for “employee” and “employment” – which can complicate status issues. The ET in this case highlighted the fact that the Equality Act 2010 includes a wider definition of employment which includes workers: *“employment under a contract of employment, a contract of apprenticeship or a contract personally to do work”*. These “employees” (or, under different legislation, “workers”) were therefore protected under relevant national law. However, the ET did stress that this was not simply a question of what label was applied. Had this group of individuals been called “workers” under the Equality Act 2010, the ET’s view was that they would still be protected under TUPE – the Judge felt that if this group were entitled to protection against discrimination under EU law, then they should also be entitled to have liabilities for the infringement of such rights transferred and preserved.

This is only a first instance ET decision and so is not binding on other Tribunals. However, it is consistent with the overall trend of extending the scope of protection for workers. Many transferees are likely to want an appellate decision on the issue before changing their practices on TUPE transfers to inherit a wider group of individuals and so, for the time being, this decision may well result in additional disagreements over who is or is not in scope to transfer under TUPE, and where any liabilities in respect of the same should fall.

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