



# CHANGES IN EMPLOYMENT LAW AFFECTING THE MANAGEMENT OF BUSINESS TRANSFERS

8 August 2024



# MEET THE PRESENTERS AND TECHNICAL SUPPORT



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# USING GOTO WEBINAR



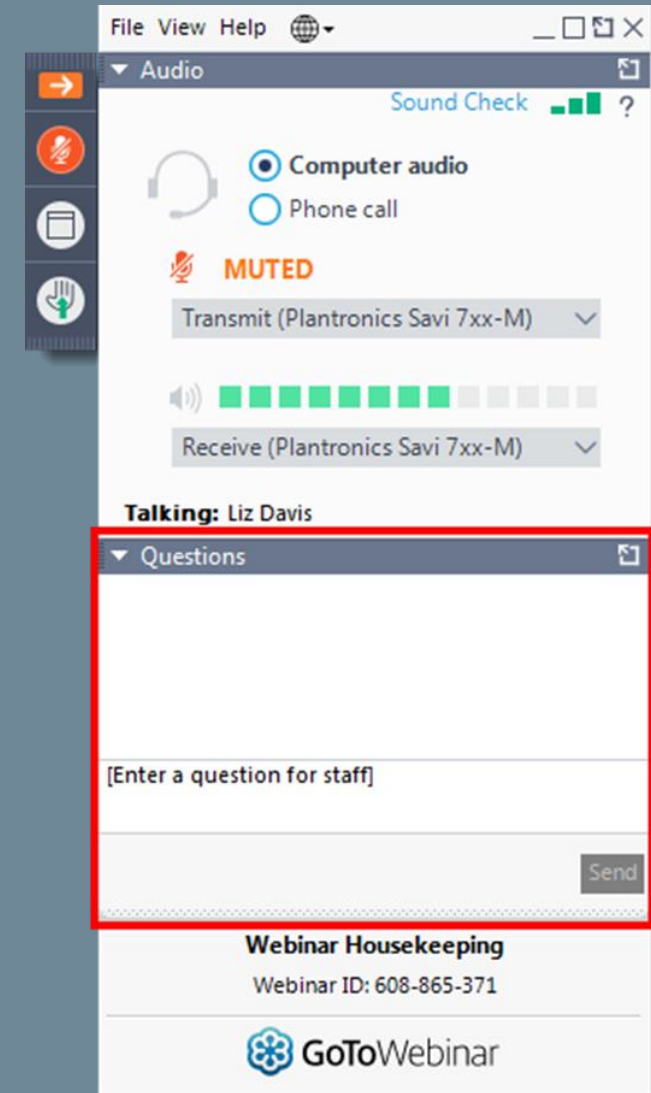
# QUESTIONS...



# GO TO WEBINAR

## Your Participation

Please submit your text questions and comments using the Questions panel





POLL INCOMING...

WHAT DO YOU  
**THINK?**

# AGENDA



Overview



2024 Legislation changes



Future changes



What would a labour Government do?



Q&A



POLL INCOMING...

WHAT DO YOU  
**THINK?**





# OVERVIEW

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- TUPE – The Transfer of Undertakings (Protection of Employment ) Regulations 2006
- Business transfers - an undertaking or business situated in the UK immediately before it is sold to a new owner
- Service provision changes :
  - Outsourcing and insourcing changes are known as ‘service provision changes’ and TUPE applies when the services remain fundamentally or essentially the same.
- Employees employed immediately prior to the transfer will transfer on existing terms and conditions with continuity of service honoured.
- Any dismissal where the reason, or principal reason is because of the transfer will automatically be unfair, unless there is an economic, technical or organisational reason for the dismissal such as redundancy.



# OVERVIEW

- Contractual terms are not just those in the written contract of employment
- Custom and practice
  - annual bonuses
  - extra leave days
- Company policies and procedures
  - a well-established practice of flexible working hours
- Collective agreements
  - any benefits agreed upon through collective bargaining such as shift premiums





# 2024 LEGISLATION CHANGES

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- Changes to consultation rules came into force for transfers occurring on or after 1 July 2024
- Prior to this, only micro businesses, employing fewer than 10 people, could consult directly with employees where there was no existing representation in place.
- For transfers taking place on or after 1 July 2024, the business can consult directly with their employees, if there are no existing representatives in place when:
  - The business employees less than 50 people, regardless of the size of the transfer
  - A business of any size, is proposing to transfer fewer than 10 employees.





# FUTURE CHANGES




# PUBLIC CONSULTATION

Reaffirming that only employees are protected by TUPE



Removing the complex obligation to split employees' contracts between multiple employers where a business is transferred to more than one new business



Abolishing the legal framework for European Works Councils

# PUBLIC CONSULTATION

## Reaffirming that only employees are protected by TUPE

- In 2019 an Employment Tribunal ruling held that “limb b workers” could transfer under TUPE. Up to this point, it was employees only.
- Dewhurst v Revisecatch Ltd t/a Ecourier.
- “Limb b workers” is a 3<sup>rd</sup> party who undertakes to perform work personally under a contract for service and who has a casual employment relationship.
- It would include:
  - freelancers providing regular services but who are not on the payroll
  - Agency workers
  - Gig economy workers
  - Casual workers
- The proposal aims to reverse this position and TUPE to apply only to employees.





# PUBLIC CONSULTATION

**Removing the complex obligation to split employees' contracts between multiple employers where a business is transferred to more than one new business**

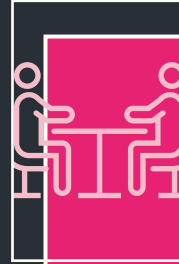
- Complex legal position that came following a case heard at the European Court of Justice in 2020 (ISS Facility Services NV v Govaerts and Alalian NV).
- It does pose complex issues for employers.



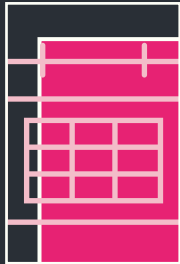
# CHALLENGES



Extreme care in how you undertake due diligence and planning with several businesses



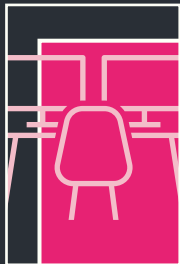
How can you require another employer to agree to the division of responsibilities and obligations



Managing timelines with other businesses



How do you ensure a smooth and legal transition from one business to several others



How do you divide employees' roles and responsibilities amongst new employers



How can you ensure employee engagement is not negatively impacted

# PUBLIC CONSULTATION

## Abolishing the legal framework for European Works Councils

- Brexit resulted in the UK no longer being able to introduce new European Works Councils, but those already in place could continue.
- The proposal is to repeal the legal framework that allows these remaining ones to continue.





# WHAT WOULD A LABOUR GOVERNMENT DO?

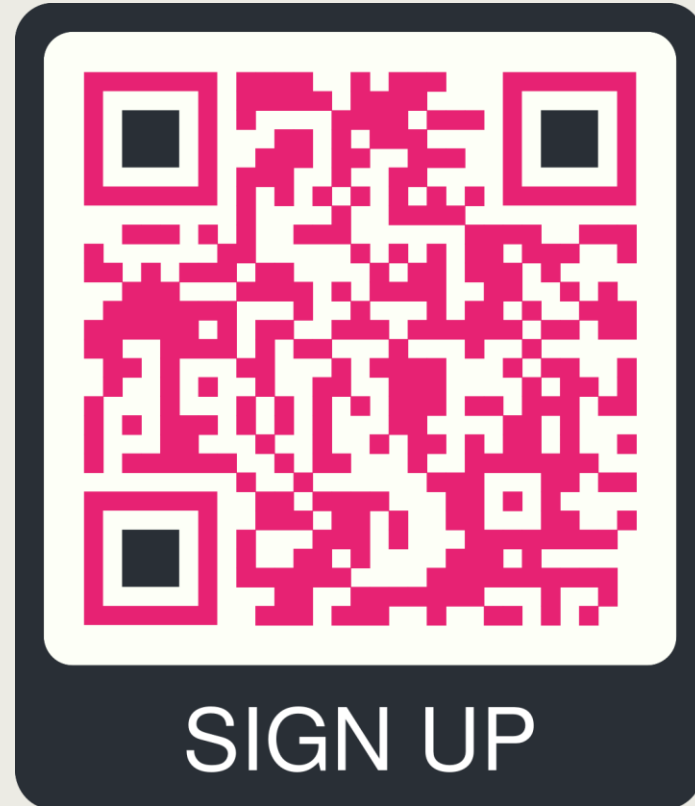
# WHAT WOULD A LABOUR GOVERNMENT DO?

- Unclear what happens on the conclusion of the consultation introduced by the Conservative Government
- The Labour Government indicated in their publication “Make work pay”, published before the election, that **“Labour will also strengthen the existing set of rights and protections for workers subject to TUPE processes”**
- TUPE was not included in the King’s speech, which is what the King delivers to set out the priorities for the Government in the next parliamentary year.



# WHAT HAPPENS NEXT...KEEP IN TOUCH WITH US

We're setting up a Labour Hub on our website which we will be keeping up to date. Sign up to our newsletter for notifications of any updates



# THE EMPLOYMENT LANDSCAPE POST THE GENERAL ELECTION



Free on-line webinar: <https://www.hrsolutions-uk.com/webinars/>



Thursday 12 September 2024, 10am – 11am



Q&A – we'll be taking your live questions



The new Employment Bill – 18 areas of change  
The Equality (Race and Disability) Bill – 2 areas of change

# QUESTIONS...





# OUR HR KNOWLEDGE BASE

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- HR articles and guides to keep you fully informed
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- Equality, Diversity & Inclusion
- Managing Grievance
- Managing Disciplinary
- Employment Law
- ILM Level 3
- ILM Level 5



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# NEW WEBINAR SCHEDULE

**The employment landscape post the General Election**

12 September 10am – 11am

**Understanding risk when managing your people**

10 October 10am – 11am

**Managing work related functions and events**

14 November 10am – 11am

**2025 The HR year ahead**

12 December 10am – 11am



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STRATEGIC HR THINKING: ALIGNING  
PEOPLE AND BUSINESS STRATEGY



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POLL INCOMING...

WHAT DO YOU  
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# Thank you

Any question? Please get in touch:

0844 324 5840

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