

Continuity of employment and service

Redundancy - teachers and support staff

For redundancy purposes, the Local Government Redundancy Payments Modification Order (as amended) links many kinds of employment in the public sector, allowing continuous previous employment between specified, different employers to count in calculating entitlements to redundancy pay. All maintained schools and academies are covered by the Modification Order, so employees moving between them have continuity of service for redundancy purposes.

To qualify for redundancy:

- Employees must have 2 years' service
- The service must be **continuous**
- Served in a body contained in The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999. Which includes:
 - Schools
 - Academies/Free Schools
 - Local Authorities
 - FE Colleges (formerly under Local Government Control)

Annual leave, occupational sickness scheme, occupational maternity scheme - support staff

The national conditions of service for support staff provide that for the purpose of entitlements regarding annual leave, occupational sick pay scheme and occupational maternity leave scheme continuous service will include continuous previous service with any public authority to which the Redundancy Modification Order applies (see Redundancy). Support staff employees therefore carry these entitlements with them when moving between maintained schools and academies and vice versa.

The national conditions of service for support staff also provide that when an employee returns to local government service following a break for maternity reasons or reasons concerned with caring for children or other dependants he or she will be entitled to have previous service taken into account in respect of the sickness and maternity schemes provided that the break in service does not exceed eight years and that no permanent paid full time employment has intervened. For the purpose of the calculation of entitlement to annual leave, the eight years' time limit does not apply, and the break can be longer, provided that no permanent full-time employment has intervened.

If employees transfer under TUPE regulations to an organisation not covered by the Modification Order continuity of service is protected by the TUPE regulations. If they return voluntarily to local government service continuity is broken. However, national conditions of service provide that a member of the support staff who returns within five years of the original transfer without a break between employments will have all previous continuous service recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay.

Teachers - occupational sick scheme and occupational maternity scheme

The national conditions of service for teachers provide that sick pay entitlement is calculated based on aggregated teaching service with one or more local education authorities. The Local Government Employers advice is that this does not cover service with the governing bodies of voluntary aided or foundation schools, but in Birmingham this distinction has not been made and teaching service is aggregated across all maintained schools.

Neither the national conditions of service nor the Birmingham interpretation covers service in academies. Therefore, teachers take their accumulated sick pay entitlement with them when transferring to an academy and bring it back with them if they subsequently return to a maintained school.

However, if they have not accumulated the maximum sick pay entitlement under national conditions of service before the transfer the entitlement is not increased by the time spent in the employment of the academy. Their accumulated sick pay entitlement is, in-effect, frozen. The academy might decide unilaterally to increase the entitlement as per their contractual entitlements, but there is no provision for any such increase to be carried back into a maintained school, and length of service remains the aggregated length of service as at the start date in the academy.

The right not to be unfairly dismissed - teachers and support staff

Section 218(7) of the Employment Rights Act 1996 provides that;

"if an employee of the governing body of a school maintained by a local education authority is taken into the employment of the authority, or, an employee of a local education authority is taken into the employment of the governing body of a school maintained by the authority his or her period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment."

In short, for the purposes of claiming employment rights, such as the right not to be unfairly dismissed, there is continuity of employment between community schools and voluntary aided/foundation schools and vice versa. However, the legislation does not give similar continuity between different voluntary aided and foundation schools.

To claim unfair dismissal:

- Employee must have 2 years' continuous service
- Service is only with the current employer. (BCC/Trust/Board of Governors)
 - Exception – Voluntary movement from BCC school to a VA/Foundation/Trust school or vice versa. Continuity is retained because it is a school maintained by the LA. (Section 218(7) of Employment Rights Act 1996) No continuity between VA/Foundation/Trust schools

Continuity of service – TUPE

When employees transfer from maintained schools to academies as part of their school's academisation, they transfer with their existing conditions of service, which may be altered subsequently by the new employer.

Teachers transferring to an academy take with them their contractual entitlement to be paid under the School Teachers Pay and Conditions Document, even though that Document does not apply to academies. Academies are free to offer different salaries and conditions to teachers and may negotiate changes to existing terms and conditions after the transfer has taken effect.

Teachers who move voluntarily from an academy to a maintained school should check the pay policy of the school to which they intend to move, to find out how that school has chosen to treat previous teaching service when assessing a starting salary.

Please see below two tables, one for support staff, and one for teachers, summarising the situation for transfers and for voluntary movement between different schools which may help to explain continuity of service for the various employment rights.

CONTINUITY OF SERVICE – SUPPORT STAFF MOVING BETWEEN SCHOOLS

	Transfer to academy under TUPE	Transfer from community to vol. aided or foundation under TUPE	Voluntary movement from academy to community or vol. aided or foundation	Voluntary movement from community to academy	Voluntary movement from community to vol. aided or foundation or vice versa	Voluntary movement between voluntary aided and foundation	Voluntary movement between academies
Qualification period for right to claim unfair dismissal	TUPE prescribes that previous service counts as continuous	TUPE prescribes that previous service counts as continuous	No continuity of service – change of employer	No continuity of service – change of employer	Continuity is provided by Section 218(7) of the Employment Rights Act 1996	No continuity of service – change of employer	Depends whether there is a change of employer, i.e. whether the academies are run by the same academy trust or not
Redundancy payments	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service
Annual leave	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by the Academy Trust) recognizes previous service with any public body to which the Redundancy	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by academy) recognizes previous service with any public body to which the Redundancy Modification

				Modification Order applies			Order applies
Sick leave	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by the Academy Trust) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by academy) recognizes previous service with any public body to which the Redundancy Modification Order applies
Maternity leave	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by the Academy Trust) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by vol. aided/foundation) recognizes previous service with any public body to which the Redundancy Modification Order applies	Green Book (if followed by academy) recognizes previous service with any public body to which the Redundancy Modification Order applies
salary	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	If both schools subscribe to Birmingham single status, time-served increments	If both schools subscribe to Birmingham single status, time-served increments	If both schools subscribe to Birmingham single status, time-served increments	If both schools subscribe to Birmingham single status, time-served increments	If both schools subscribe to Birmingham single status, time-served increments

CONTINUITY OF SERVICE –TEACHERS MOVING BETWEEN SCHOOLS

	Transfer to academy under TUPE	Transfer from community to vol. aided or foundation under TUPE	Voluntary movement from academy to community or vol. aided or foundation	Voluntary movement from community to academy	Voluntary movement from community to vol. aided or foundation and vice versa	Voluntary movement between voluntary aided and foundation	Voluntary movement between academies
Qualification period for right to claim unfair dismissal	TUPE prescribes that previous service counts as continuous	TUPE prescribes that previous service counts as continuous	No continuity of service – change of employer	No continuity of service – change of employer	Continuity is provided by Section 218(7) of the Employment Rights Act 1996	No continuity of service – change of employer	<u>Depends</u> whether there is a change of employer, i.e. whether the academies are run by the same academy trust or not
Redundancy payments	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service	Redundancy Modification Order states continuous service
Annual leave	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service	Annual leave is not linked to continuity of service
Sick leave	TUPE prescribes that terms <u>and</u> <u>conditions</u> transfer	TUPE prescribes that terms and conditions transfer	Depends on total, not continuous, service	Depends on total, not continuous, service	Depends on total, not continuous, service	Depends on total, not continuous, service	Depends on total, not continuous, service

Maternity leave	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	No continuity of service – change of employer	No continuity of service unless the academy trust decides to recognize it	Continuity is provided by Section 218(7) of the Employment Rights Act 1996	Birmingham Teachers' Maternity Leave Scheme recognizes continuity of service	<u>Depends</u> whether there is a change of employer, i.e. whether the academies are run by the same academy trust or not
salary	TUPE prescribes that terms and conditions transfer	TUPE prescribes that terms and conditions transfer	Depends on the pay policy of the academy	Depends on the pay policy of the academy	The School Teachers' Pay and Conditions Document covers all maintained schools, but schools have considerable discretion over starting salaries	The School Teachers' Pay and Conditions Document covers all maintained schools, but schools have considerable discretion over starting salaries	Depends whether there is a change of employer, <u>i.e.</u> whether the academies are run by the same academy trust or not, or on the pay policy of the new academy