School closures and change of status

This is a brief guide to your rights if your school closes, merges or changes status. As always, you should check your contract of employment and/or staff handbook for any particular provision or policy that applies to you in these circumstances.

In each of the scenarios outlined below we recommend that you contact ATL either at your local branch level or ATL’s member advisors at the London office.

What happens if my school closes?

State/maintained sector

If you work in a state/maintained school which is closing, your employment at the school will probably terminate by reason of redundancy. In a redundancy situation, your school, and usually the local authority, have certain obligations towards you.

Broadly, these obligations are as follows:

• The school management should consult the staff, via meetings and the provision of information. Where ATL is a recognised union the school must consult formally with ATL.

• The management should allow you reasonable paid time off to look for alternative work, including attending interviews, and look for suitable alternative work for you within the local authority.

• If no suitable alternative work is found, and you have over two years’ continuous service, the management has a duty to pay you a redundancy payment which is not less than the minimum you are entitled to by law.

For the purposes of calculating your redundancy payment your continuous service with one or more local authority employers is taken into account. Also, in calculating the amount of your redundancy payment (although they are not obliged to do so) local authorities will generally use your gross weekly salary, rather than the statutory minimum amount.

You will also be entitled to notice as per your contractual entitlement.

Independent sector

As they are more vulnerable to market forces than state schools, announcements that independent schools are to close are often made at the last minute. Nevertheless, you are still entitled to paid notice in accordance with your contract of employment, and the school is still bound by the statutory redundancy provisions.

Broadly, the school’s obligations are as follows:

• Where ATL is recognised for the purposes of collective bargaining, to consult ATL representatives about the proposed closure, the school management should consult the staff via meetings and the provision of information (see below).

• The management should allow you reasonable paid time off to look for alternative work, including attending interviews, and, where the school is part of a trust or federation, look for suitable alternative work for you within that trust or federation.

• If no suitable alternative work is found, and you have over two years’ continuous service, the management have a duty to pay you a redundancy payment which is not less than the minimum you are entitled to by law.

You should check whether the school pays, or has paid, enhanced redundancy payments as you could be entitled to an enhanced payment. Schools sometimes offer negotiated packages for members of staff who are willing to stay on at their school up until the actual date of its closure, rather than handing in their notice before then to take up a job elsewhere.

Where the school is going to make 20 or more employees redundant in the space of 90 days or less (which is normally the case when a school closes) there is a ‘collective redundancy’ situation. In that situation
the school must consult in advance with an ATL representative (where ATL is recognised for the purposes of collective bargaining) or (where ATL is not so recognised) the school must arrange for the election of appropriate employee representatives.

The school must also notify the Department for Business, Innovation and Skills. Consultation with ATL and/or employee representatives must be completed before any notices of dismissal are issued to employees.

Where an independent school is forced to close at very short notice and is formally insolvent, employees can apply to the Department for Business, Innovation and Skills for the redundancy payment to be paid out of the National Insurance Fund.

What happens if my school is taken over by another school so that I have a new employer?
In this situation your employment is protected by the Transfer of Undertakings (Protection of Employment) Regulations 2006, known as the TUPE Regulations.

TUPE states that where an undertaking, such as a school, is taken over by a new employer (the new school) the employees are entitled to transfer their employment, under the same terms and conditions, to the new employer.

In addition, the staff collectively have the right to be consulted on the changes.

The staff representatives must be told:
• when and why the merger is happening
• what the impact on you will be
• whether any reorganisation will take place and how it will affect you.

In some cases the school will be reorganised, which could lead to redundancies or dismissals for an ‘economic, technical or organisational’ reason. In this case, the school must follow the correct redundancy procedure (outlined above) and (in the case of proposed individual redundancies) must also observe the correct three-step dismissal procedure (see separate ATL factsheet: ADV9 Teachers’ statutory rights: maintained sector).

What happens if my school is becoming an academy?
Please note that our advice on this question applies to all members of staff, whether they are employed in the state maintained or the independent sectors.

An academy is an independent school operating under a funding agreement with the Department for Education, and in partnership with its local authority.

Where an academy replaces an existing school or schools, the TUPE regulations (explained above) will generally apply. This means the terms and conditions of employment for members of staff at the new academy must remain the same after the change of status as they were before it took place.

Accordingly, if you work at an independent school, your terms and conditions should remain the same as they were when the school was wholly independent of the state sector. If you work at a state school, your terms and conditions should remain as they are under the national agreements.

An academy is not obliged to pay new members of staff, ie those not transferred across from the existing school, in accordance with the national terms and conditions negotiated for employees in the state maintained sector. However, academies are strongly advised to follow the national terms and conditions.

If a new academy is established and there is no transfer from an existing institution, the employer may engage an employee on terms that are different to those set out in national agreements.

ATL’s view: staff working at academies should suffer no detriment in their terms and conditions on transfer and should be employed, at the very least, on the terms set out in existing national agreements.

What happens if my state school becomes a ‘fresh start’ or is part of a ‘collaborative restart’?
A ‘fresh start’ or ‘collaborative restart’ school is a new school opened in place of a school causing concern which has closed. The new school is considered to be a fresh start if it opens on its own and a collaborative restart if it opens with support from a trust or from a second local school in a federation arrangement.

Ascertaining the legal status of the new school can be
tricky. As a general rule, if the status of a school does
not change, the TUPE Regulations (discussed above)
will not apply and your employment should continue.
However, many schools in this situation reorganise their
staffing structures. They must still follow the correct
procedures (outlined above) if they wish to make
redundancies, or follow the correct procedures if they
wish to dismiss staff for any other reason (see separate
ATL factsheet: ADV9 Teachers’ statutory rights:
maintained sector).

If the status of the school does change, for example to
a trust school, your employment will be covered by the
TUPE Regulations – this situation is explained further
below.

What happens if my state school
becomes a trust school?
A trust school is a foundation school supported by a
charitable foundation or trust which appoints governors
to the school’s governing body. Trust schools are
funded in exactly the same way as other state
maintained schools.

However, the governing body of a trust school employs
staff directly (as opposed to the local authority being the
employer) and the governors can draw up their own
admissions arrangements.

The employment of teachers who are to be transferred
from a community or voluntary controlled school to a
trust school will be protected by the TUPE Regulations.
Also, trust schools must employ existing and new
teachers according to the national agreements on pay
and conditions, although adoption of the Burgundy
Book to apply to new employees is not automatic.

Support staff members already working at the school
and transferring on the change to trust status would be
covered by the TUPE Regulations. However, support
staff members who take up employment at a trust
school are not entitled to be employed under the
National Joint Council for Local Government Services
agreement on the employment of support staff (see
separate ATL factsheet: ADV11 Statutory rights: support
staff).

ATL’s view: trust schools should employ support staff
members on equivalent terms and conditions and as a
minimum should employ staff on the terms set out in
the National Joint Council for Local Government
Services agreement.

Need advice?
You first point of contact is the ATL rep in your school/college. Your local ATL branch is also available to help, or you can
contact ATL’s member advisors on 020 7930 6441, email info@atl.org.uk. Don’t forget there’s lots more advice on ATL’s
website at www.atl.org.uk.

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