Staff and a Pharmacy Sale: when to spill the beans...

Selling your pharmacy is a busy time - from marketing and valuations to negotiating a contract for sale, there is a constant stream of decisions to be made and processes to be followed (as well as the day-to-day job to do!). However, you are not the only person affected by the sale – your employees, and any self-employed locum pharmacists you might engage, also have a real interest in this and the question of when to inform them of a pending sale is an area we are often asked to advise on.

Whilst there are legal procedures that need to be adhered to, these require to be carefully balanced against more practical considerations, in order to ensure a smooth handover and to preserve the respect and goodwill of the staff.

Legal Issues and Timing

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") set out your legal obligations in terms of informing your employees (TUPE does not apply to self-employed staff) about the sale. Note that TUPE does not apply to a share deal and separate advice should be taken regarding that.

Duty to inform: TUPE requires that employees are provided with specific information about the sale of the pharmacy in writing and that it must be provided to the employees "long enough before the relevant transfer". This phrase is unhelpfully vague but it is suggested that the information is provided as early as possible and, ideally, at least 4 weeks before the sale concludes.

One of the pieces of information you need to provide your employees with in accordance with TUPE is whether the buyer envisages any "measures" in relation to the employees (i.e. any proposed changes to terms of employment or working practices). You, therefore, need to allow plenty of time to request that information from the buyer in advance of informing your employees of the sale.

In addition to the requirements under TUPE, in our experience, it can be difficult to collate the documents required for a sale without arousing any suspicion if the staff are not aware of the sale and you may feel like you are misleading staff. Further, a change to the identity of their employer can be a concern for an employee and giving them plenty of notice and time to ask questions can assist with managing any concerns.

Duty to consult: If you envisage any measures in relation to the transferring employees or have any other employees who may be affected by the transfer then, in addition to the duty to provide specific information to your employees about the proposed transfer, you would also require to consult with them about the measures you envisage and sufficient time should also be allowed for that. Note that you are not required to consult with transferring employees about measures envisaged by the buyer.

Employee representatives: If you employ 10 or more employees (regardless of how many of your employees may be transferring), they must be given the opportunity to appoint a representative(s) to receive the necessary information in respect of the transfer. Therefore, where you have 10 or more employees, you also need to allow sufficient time for an election process if the employees wish to elect a representative.

You should be aware that a failure to inform (and, where required, consult) in good time before the transfer could result in claims to the Employment Tribunal, which can attract compensation of 13 weeks' pay per employee. It is, therefore, important that sufficient time is allocated to follow the above steps.

Practical Points

In addition to the timing considerations above, when you tell the staff often depends upon your attitude and the relationship you have with your staff, as well as how the sale negotiations are going. Whilst each sale will turn upon its own particular circumstances, there are two key points you should consider:

Certainty: There is always a slim chance that the sale does not proceed for some reason. Therefore, many employers prefer to wait until a sale has progressed sufficiently before informing staff, so that the chances of it not going ahead are reduced. If the employees are informed of the sale too early and it subsequently falls through, this can be unsettling and lead to unrest together with the potential loss of some staff. However, this has to be balanced against your obligations under TUPE in respect of timing and, in some cases, it will be necessary to inform your employees of the proposed transfer even though the sale documentation is not finalised.

Self-employed locums: You should also consider when to inform any locums or other self-employed individuals of the sale. As most locums are self-employed, they do not transfer automatically to a buyer by virtue of TUPE and the legal requirements set out above do not apply. However, locums can be integral to certain pharmacies and, where this is the case, we tend to advise that they are informed of the sale, confidentially, either just prior to or at the same time as informing the employees.

Regardless of the timing of informing employees and locums, it is important that they are informed in a positive and reassuring manner and are afforded the opportunity to have an open discussion on what the sale may mean for them. Putting a positive spin on the sale and being available to answer any questions posed will increase the likelihood of a smooth transition and should assist with staff morale within the pharmacy. You could consider having a joint meeting with the staff and purchaser to discuss the sale and give the employees a chance to meet the purchaser and ask questions, with you there to support them.

Thorntons Pharmacy Team regularly advise pharmacy owners and operators on the sales process and can help you to strike the correct balance between complying with your legal obligations and maintaining your strong relationship with your staff.

Any question? Please get in touch.

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