

## TUPE: informing and consulting

### 1 . What the law says

Before a TUPE transfer, by law both the old and new employers must inform a recognised trade union or employee representatives. They might also need to consult.

Informing and consulting is a legal obligation. It can also:

- reduce stress and uncertainty for employees
- help employers to identify potential problems early on
- make the transfer smoother

### What informing and consulting means

'Inform' is when an employer tells affected employees or their representatives the facts about the transfer.

Employers must inform about a transfer even if there are no changes they need to consult employees about.

'Consult' is when an employer:

- talks and listens to affected employees or their representatives about expected 'measures' – measures are any changes which will affect employees
- genuinely considers their views

By law, employers might not need to consult, if the changes will not affect employees. But if an employer finds out later that changes are likely to affect employees, they will need to start consulting.

### If an employer does not inform and consult

If the old or new employer fails to inform or consult, they might be jointly or individually liable.

Depending on the situation, they could be taken to an employment tribunal by:

- the affected employees
- a recognised trade union or elected employee representatives

### Failing to inform and consult with trade union or employee representatives

An employer will have failed to inform and consult if:

- there is a recognised trade union and they did not inform and consult its representatives

- there is no recognised trade union and the employer failed to arrange an election of employee representatives to inform and consult with
- they did not genuinely and meaningfully consult with employee representatives

### Failing to inform and consult with employees directly

In some situations an employer will have failed to inform and consult if they do not inform and consult with employees directly. This will depend on the size of the organisation or the number of employees transferring.

An employer has failed to inform and consult if there are no recognised trade union or employee representatives and either:

- they have fewer than 50 employees in their organisation and they did not consult with employees directly
- fewer than 10 employees are transferring and the employer did not consult with employees directly

### If an employer does not tell employees about a TUPE transfer

Employees might be able to make a claim to an employment tribunal if their employer:

- does not tell them or their representatives about a TUPE transfer
- does not give them or their representatives the name of the new employer

If an employee decides to make a claim, they should do this as soon as possible. This is because there are strict [time limits for making a claim to an employment tribunal](#).

### Who pays compensation

If an employment tribunal claim is successful, either employer could have to pay compensation.

They could have to pay up to 13 weeks' uncapped gross pay for each affected employee.

Employers should get an indemnity from each other before agreeing the transfer. An indemnity is an agreement from the other employer that they will pay for costs if they fail to consult.

## 2. Who to include

Employers must include all affected employees when informing and consulting about the transfer. This includes employees who are on:

- sick leave
- maternity, adoption, paternity, shared parental, neonatal, carer's or parental bereavement leave

Affected employees include employees who are:

- transferring from the old employer to the new employer
- staying employed with the old employer but whose work will be affected by colleagues transferring out
- already working for the new employer, whose work will be affected by the staff transferring in

If there are recognised trade union or employee representatives, the employer must consult with them.

The employer must arrange elections for affected employees to vote for representatives if there are no recognised trade union or employee representatives and either:

- there are 50 or more employees
- 10 or more employees are transferring

The employer can consult with employees directly if there are no recognised trade union or employee representatives and either:

- there are fewer than 50 employees
- fewer than 10 employees are transferring

Alternatively, the employer could arrange an election with affected employees to vote for representatives.

## If an employer needs to elect employee representatives

When arranging an election of employee representatives, employers must make sure that:

- all employees who stand for election are affected by the transfer at the time of the election
- affected employees are not stopped from standing for election
- affected employees are given the right to vote for employee representatives
- affected employees can vote for as many candidates as there are representatives to be elected in their part of the organisation
- votes can be made secretly and counted accurately
- enough employee representatives are elected to represent the interests of all affected employees

Employers should encourage employees to stand for election.

Employers should give employees a second chance to stand if the first election does not have enough candidates.

To encourage employees to stand for election, an employer could:

- reassure employees that they would receive employee representative training
- explain what rights employee representatives have

Employees might not elect representatives within a reasonable time. For example, if no employees stand for election.

In this situation, the employer must inform and consult directly with all affected employees.

## Rights of employee representatives

During consultation, employers should give employee representatives the right to:

- a reasonable amount of paid time off for representation duties
- reasonable access to affected employees and workplace facilities
- paid time off for TUPE training

An employer must not dismiss an employee or cause them detriment because they're a trade union or employee representative.

Detriment means someone experiences one or both of the following:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- their employer reduces their hours
- they experience [bullying](#)

- they experience [harassment](#)
- their employer turns down their training requests without good reason
- they are overlooked for promotions or development opportunities

[Find out more about trade union and non-union representation](#)

### 3. What to inform and consult about

Employers must inform recognised trade union or employee representatives about a TUPE transfer.

Even if there's a trade union, employers should keep all affected employees informed about the transfer. Not all employees are trade union members, so they might not get updates from representatives.

An employer might want to agree with representatives what information to share with employees, and what to keep confidential.

Sharing details about intellectual property, for example copyrights or trademarks, could be damaging to the organisation.

#### What an employer must inform about

Both old and new employers must inform the representatives of affected employees in writing about the details of the transfer. This includes why it's happening. This could be in a letter or email.

By law, the new employer must inform the old employer of any 'measures'. These are changes that are likely to affect employees transferring in. The old employer must pass this information on to representatives of affected employees.

The information the old and new employer must give representatives in writing must include:

- confirmation that the transfer is happening, when it is expected to happen and why
- the number of agency workers employed, the departments they are working in and the type of work they are doing, if agency workers are used
- any measures the new employer is expecting which may affect staff transferring in – for example, changes to working hours, job descriptions, salary payment dates or risk of redundancies
- any legal, economic and social implications

Legal, economic and social implications might include:

- legal – effect on contracts, statutory rights and collective agreements
- economic – the new employer's financial worth, pay and benefits, pensions
- social – changes to start and finish times, changes to team and management structures

#### What an employer must consult about

Employers must consult with recognised trade union or employee representatives about measures they're expecting.

In a transfer, measures can include:

- redundancies
- change in location of work
- changes to pay dates
- new working patterns, for example hours of work

- different pension arrangements
- changes to trade union recognition or collective bargaining

The old employer must inform their transferring employees about any measures the new employer might make. But they cannot consult on these changes because they have no control over them.

If no measures are expected, there's no legal obligation to consult. However, many changes can count as a measure. Employers should consult unless they are sure employees will not experience any change as a result of the transfer.

## 4. When to inform and consult

There's no fixed length of time for employers to inform and consult employees and their representatives in a TUPE transfer.

By law, an employer must allow enough time to inform and fully consult before the transfer.

They should start the process as early as possible. This will help them make sure they:

- meet consultation requirements
- allow enough time to include anything agreed with employees or their representatives

The time this takes depends on:

- the size of the organisation
- how many employees are affected
- the complexity of any changes
- whether employee representatives need to be elected

## When considering a transfer

Both the old and new employer should consider informing employees and representatives about a potential transfer. They should do this before making any decisions.

Although it's not legally required at this stage, it can help to avoid rumours and concern among employees.

## When employers must give notice of TUPE

Employers must give notice of a TUPE transfer. But there is no fixed time period for this.

Employees' contracts do not end when they transfer. So employers do not need to give the same notice period as other situations. For example, dismissals.

## When preparing for the transfer

Once the old and new employer start preparing for the transfer, they must:

- inform and consult representatives or employees depending on the size of the organisation or transfer – [find out more about who to consult with](#)
- arrange employee representative elections, if needed
- identify who will transfer
- answer questions, concerns and feedback

It's good practice for the old employer to also speak regularly with the employees who are not transferring or affected.

They might be concerned about:

- job security
- how the work will get done
- what affect the transfer will have on the organisation

[Find out more about what to inform and consult about](#)

## After the transfer

On the transfer date, transferring employees will move from the old employer to the new employer.

Employers no longer need to inform and consult, unless they plan to make redundancies. For this, they must hold a [redundancy consultation process](#).

Both old and new employers should keep talking to employees and their representatives about the transfer. This will help:

- new employees to settle in
- reassure all employees, not just those who transferred
- create good working relationships between new and existing employees

The new employer might consider changing contracts of employees who have transferred to their organisation. There are things they must consider if the main reason for the change is the transfer. [Find out more about changing a contract after a TUPE transfer](#).

## 5. How to inform and consult

When consulting employees, an employer should:

- keep employees informed
- hold genuine consultation

## Keeping employees informed

Employers should use internal communication channels to keep employees informed. For example:

- employee representatives
- a workplace forum – a group where an employer and employees discuss important matters
- video calls
- noticeboards
- the organisation's intranet
- emails, letters or leaflets given directly to affected employees

Employers must make sure all employees can access the information. This includes:

- disabled employees who might need [reasonable adjustments](#) – for example documents in an accessible format
- employees on sick leave
- employees on maternity, adoption, paternity, shared parental, neonatal, carer's or parental bereavement leave

Employers should also put feedback channels in place to answer questions and address concerns through the process.

## Holding genuine consultation

Consultation must be genuine and meaningful.

This means employers must:

- make sure representatives can contact the affected employees
- provide facilities for meetings and time to meet up with the affected employees
- seriously consider any responses and suggestions from the representatives
- try to reach agreement

They should also consider providing training for representatives to carry out their role effectively.

If an employer fails to carry out genuine and meaningful consultation, the trade union or employees could make a claim to an employment tribunal.

## Considering suggestions from employees and representatives

Employers do not have to make changes suggested by employees and representatives during consultation.

But employers must show that they have:

- discussed any changes with all affected employees and their representatives
- listened to their suggestions and fully considered them
- tried to reach an agreement

If agreement cannot be reached, the employer should tell employee representatives why they're rejecting the suggestions. This must be in writing, for example a letter or email.

If there are no employee representatives, the employer must give this information to the affected employees.

## Get more advice and support

If you have any questions about informing and consulting during TUPE, you can [contact the Acas helpline](#).

You can also find more advice on [TUPE transfers](#), including:

- [employee liability information](#)
- [transferring employees](#)