

TUPE informing and consulting

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.