

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](#)