

Changing a contract after TUPE

After a TUPE transfer, an employer might want to make changes to employees' contracts.

There are things an employer must consider if the main reason for a contract change is the transfer.

If the main reason for a contract change is the transfer

After a TUPE transfer, an employer can only make changes to contracts because of the transfer if one of the following applies:

- they improve employees' terms and conditions – for example increasing their holiday entitlement
- there is an 'economic, technical or organisational' (ETO) reason involving a change in the workforce – for example the organisation needs restructuring
- there's a clause in the contract that allows the employer to make the change

There's no limit on how long TUPE regulations protect employees' terms and conditions.

For example, an employee is transferred to an organisation. 10 years later the employer wants to change their terms and conditions for a reason related to the transfer. By law, the employer can only make the changes if one of the situations above applies.

Economic, technical or organisational (ETO) reasons

By law, an employer can agree with an employee to change an employment contract if:

- there's an 'economic, technical or organisational' (ETO) reason
- that reason involves a change in the workforce
- the employee agrees to the change
- the ETO reason is the main reason for the change

ETO reasons include:

- economic reasons – for example, essential cost-saving requirements
- technical reasons – for example, using new processes or equipment
- organisational reasons – for example, making changes to the structure of an organisation

A change in the workforce could include:

- making redundancies
- restructuring an organisation
- job role changes
- a change in work location

Example – a valid ETO reason for a contract change

PrintsCo is a large printing organisation in Luton. It buys a smaller organisation called MediaLtd in Dunstable. All 27 employees at MediaLtd transfer to PrintsCo.

Most of the technology at PrintsCo is more advanced. The work can now be done by fewer employees. PrintsCo restructures its organisation and makes 5 employees redundant.

After consulting with affected employees, PrintsCo agrees to change their contracts. They can now work from Dunstable or Luton. This is likely to be a valid ETO reason. This is because the new equipment is a technical reason and the redundancies are a change in the workforce.

Example – an invalid ETO reason for a contract change

A college has employees with 6 different sets of terms and conditions because of TUPE transfers. The college wants to give everyone the same terms to make administration easier and cut costs. This is known as 'harmonisation'.

The college dismisses an employee and rehires them on a contract with lower pay. The college does not have a valid ETO reason because the contract changes do not involve a change in the workforce.

Improving terms and conditions to match other employees

Employees who have transferred will probably have different terms and conditions to existing employees.

An employer might want to make terms and conditions the same. They can only do this if it improves employees' terms and conditions.

An employer cannot:

- change terms and conditions to something worse than before – unless they have a valid ETO reason involving a change in the workforce
- say employees will get improved terms and conditions in one area if they accept worse terms and conditions in another area

Transferring employees do not have an automatic right to improved terms and conditions to match existing employees.

Employers should make sure any differences in terms do not treat particular groups of employees unfairly. This could be [discrimination](#).

If an employer is changing terms and conditions, they must follow the process for [changing an employment contract](#).

Changing terms and conditions in collective agreements

Collective bargaining agreements are agreements between the old employer and a trade union. They affect employees' terms and conditions.

When a TUPE transfer happens, any collective agreements will transfer with the employees.

Collective agreements could include terms and conditions like:

- pay
- working hours
- holiday entitlement

One year after the transfer, an employer can renegotiate terms and conditions in collective agreements. However, this is only if overall it does not make an employee's contract worse.

If the main reason for a contract change is not the transfer

TUPE regulations do not stop an employer from agreeing contract changes not related to the transfer.

There might be valid reasons for agreeing contract changes with employees. For example, if business needs have changed for reasons that do not relate to the transfer.

An employer must agree changes with employees. They must follow the process for changing an employment contract.

[Find out more about changing an employment contract](#)

Get more advice and support

If you have any questions about changes to contracts after a TUPE transfer, you can [contact the Acas helpline](#).

Acas also offers:

- [tailored support for employers](#)
- [training on TUPE transfers](#)