

## Holding a consultation

By law, employers must consult employees affected by redundancies, even if they're not a risk of redundancy.

Consulting means talking and listening to employees.

Employers should clearly explain the purpose of the consultation and how it will affect employees.

Employers cannot make employees redundant until after the transfer.

If an employer does not hold genuine and meaningful consultation before making redundancies, employees could make a claim to an employment tribunal for:

- [unfair dismissal](#)
- [failure to consult](#)

## If there's fewer than 20 redundancies

If an employer is making fewer than 20 redundancies, they do not have to carry out collective consultation. This is unless there's an agreement to do so.

Collective consultation is where an employer consults on redundancy with a recognised trade union. If there is not one, they consult with employee representatives.

It's still good practice for employers to collectively consult if they can.

Employers must still consult with employees individually. But they could also consult them in small groups.

[Find out more about redundancy consultations](#)

## If there's 20 or more redundancies

An employer must carry out collective consultation at least 30 days before making redundancies.

Collective consultation is where an employer consults on redundancy with a recognised trade union. If there is not one, they consult with employee representatives.

Employers should also consult with employees individually.

## Collective consultation

An employer must collectively consult if all of the following apply:

- they're planning 20 or more redundancies
- they plan to make the redundancies within a 90-day period

- the redundancies are in one establishment – not necessarily in the organisation as a whole, which might be larger

One establishment means one place of employment.

For example, an employer has 35 shops that they're closing. They only need to collectively consult in shops with 20 or more employees.

Employers should also consult with employees individually.

### **When to start collective consultation in a TUPE transfer**

By law, an employer must start collective consultation at least 30 days before they make anyone redundant.

The new employer might plan to make redundancies immediately after a TUPE transfer. If so, they can start collective consultation with affected employees before they transfer. Both employers must agree to this.

If an employer starts collective consultation before the transfer, they must:

- not select or dismiss any employee for redundancy until after the transfer
- continue consulting with representatives after the employees have transfer, if collective consultation has not been completed

They should also carry out individual consultation with affected employees after the transfer.

[Find out more about when to begin collective consultation](#)

### **Example of collective consultation before a transfer**

DiggingCo wins a contract to carry out building work. They will take on employees from Excavate Ltd as part of a TUPE transfer. There's not enough work for both sets of employees.

DiggingCo decides there could be 22 redundancies. DiggingCo and Excavate Ltd agree to begin redundancy consultation before the transfer.

DiggingCo consults with employees and representatives about the transfer and redundancies at the same time. They cannot make redundancies before the transfer.