

## TUPE: redundancy

### 1 . When redundancy can happen

Employers must follow a fair redundancy process throughout a TUPE transfer.

TUPE regulations protect employees' rights when they transfer to a new employer. TUPE stands for Transfer of Undertakings (Protection of Employment).

Before starting a redundancy process, an employer should:

- [check if redundancies are needed](#)
- consider how to reduce or avoid them

### Before a TUPE transfer

An employer cannot make redundancies before a TUPE transfer if the reasons relate to the transfer. This is the case for both:

- the new employer taking on the transfer
- the old employer making the transfer

For example:

- the old employer cannot reduce the number of employees to make the organisation cheaper to run, to try to find a buyer
- the new employer cannot ask the old employer to make redundancies before the transfer – this would be [unfair dismissal](#)

Employers can make redundancies before a TUPE transfer if they are not related to the transfer. They must [follow the right process for managing redundancies](#).

### After the transfer

After employees transfer, employers can only make redundancies related to the transfer if there is both:

- a genuine redundancy situation
- an 'economic, technical or organisational' (ETO) reason involving a change in the workforce

A genuine redundancy situation could be where part, or all, of the organisation is:

- closing, or has already closed
- changing the types or number of roles needed to do certain work
- changing location

### Economic, technical or organisational (ETO) reasons

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

ETO reasons must involve a change in the workforce. This could include:

- redundancies
- a significant restructure
- a change in location of the workplace

If an employer makes an employee redundant without a valid ETO reason, it will be an automatic unfair dismissal.

In this situation, the employee could make a claim to an employment tribunal. To make a claim they must have been employed continuously by the employer for 2 years or more.

## Treating employees fairly

If an employer needs to make redundancies in particular roles or teams, they must:

- treat transferred employees in the same way as employees who have worked there longer
- select employees in a fair way and not disadvantage employees who have transferred
- [hold consultations](#) with employees or their representatives about the proposed selection methods and criteria

## Redundancies not related to the transfer

If the reason for redundancies is not related to the transfer, employers do not need an ETO reason involving a change in the workforce.

[Find out more about managing a redundancy process](#)

## Contact the Acas helpline

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

## 2. 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.

## 3. Redundancy pay

Who is responsible for redundancy pay depends on when redundancies are made.

### Before a TUPE transfer

The old employer can make redundancies before a TUPE transfer if they're not related to the transfer.

In this situation, the old employer is responsible for redundancy pay.

### After a TUPE transfer

If the new employer makes redundancies after a TUPE transfer, they're responsible for redundancy pay.

The new and old employer can agree to include redundancy costs in the sale.

### Working out redundancy pay

An employee's length of service is protected in a TUPE transfer. This means their redundancy pay is based on how long they worked for both the old and new employer.

In a TUPE transfer, employees who transfer keep their terms and conditions of employment. This might include enhanced redundancy pay. Enhanced means more than the legal minimum amount.

To find out if employees are entitled to enhanced redundancy pay, the new employer should check:

- employees' contracts
- company policies
- any collective agreements between employees and a trade union

Find out more about:

- [redundancy pay – advice for employees](#)
- [how to work out redundancy pay – advice for employers](#)