

# Consulting employees and representatives

## 1 . What consultation is

Consultation is when an employer talks and listens to employees or workers and any trade union or other relevant employee representatives about organisational issues and changes which affect them.

The aim of consultation is to:

- work together to reach an agreement on a change
- find a solution to an issue

Listening to the views of employees and their representatives can help employers make a fully-informed, effective final decision, having considered their employee's thoughts, concerns and issues and with an idea of how to address them.

Consultation is a general term that can be used to cover several different things. It's important to find out which type of consultation could apply to your situation to make sure you're following the right process. For example, the type of consultation you hold could be:

- 'good practice consultation' – for when consultation could be a useful tool, for example fact-finding or exploring whether to introduce a working from home policy
- 'consultation under the law' – for when there is a potential legal implication, for example in redundancy situations where individual consultation is required as part of a fair process
- 'collective consultation' – for when the law requires an employer to take all reasonable steps, following a set process, to consult with employee representatives

## Why consultation is important

Consultation is important when:

- dealing with changes to work practices, procedures, policy and contract changes
- making decisions about the future of the organisation

Consultation helps with good employment relations as it includes staff and their representatives in the decision making process. It can lead to better decisions and can increase the chances of employees understanding and agreeing with proposed changes.

In certain circumstances consultation is a legal requirement. Making consultation a part of the organisation's normal procedures can help fulfil this requirement where it is needed.

[Find out more about when consultation is legally required](#)

## The benefits of consulting employees

Employees and their representatives are much more likely to support changes if they:

- understand the reasons behind the proposals
- have the opportunity to give their views about them
- believe that their employer has genuinely considered their views and taken them on board

Consultation can:

- help employers hear the opinions of all the organisation
- help employers explore how much support there is for a suggested change
- help employers identify issues with a suggested change so they're better prepared to address them
- be a relevant factor in employment tribunal decisions, for example when deciding if dismissals were unfair

Consulting employees can also help to:

- build trust and keep good working relations
- find problems early and solve them
- give everyone the chance to make their views known on the issues that affect them
- find better or alternative solutions that had not been thought of already
- prevent potential disagreements, tensions or conflict in the organisation
- improve employee engagement and job satisfaction
- reduce costs, for example absence or high staff turnover
- identify if a change might be against the law, for example discrimination

## Methods of consultation

How employers consult with employees will be different depending on the organisation and the issue or changes the employer wants to consult on.

Consultation can become an important part of an employer's day-to-day management processes. Employers can consult directly with employees as well as indirectly through employee representatives.

Direct consultation can take a number of forms, including:

- informal discussions with individual employees
- formal group meetings or seminars

Indirect consultation with employee representatives is best carried out in a formally set up group such as a:

- joint consultative committee made up of managers and employee representatives who work to promote good practice in the way an organisation is managed
- joint working party set up to consider and suggest ways of resolving specific issues affecting the organisation, for example a high rate of employee turnover or problems with the pay system
- recognised trade union

[Find out more about holding a consultation](#)

## Employee representatives

Who employers should consult with will depend on the circumstances. Employers might need to consult with individual employees, their representatives, or both.

Employee representatives can include:

- trade unions
- information and consultation (ICE) representatives
- employee forums

Find out more about employee representatives in the [Acas guides on trade union and employee representation](#).

## Collective bargaining

Collective bargaining is the process where employers and recognised trade unions seek to reach agreement through negotiation on issues such as:

- pay
- terms and conditions of employment

Collective bargaining is different from consultation because both the employer and trade union take responsibility for carrying out any agreement they reach. With consultation, the responsibility for decision-making remains with the employer.

Find out more about collective bargaining in the [Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes](#).

## 2. What to consult on

As an employer, you should consult employees and their representatives:

- when a change or issue is identified
- before any final decision is made

## What issues employers can consult on

As an employer, you can consult employees and their representatives on almost any issue and at any time. However, the subject needs to be clearly defined and relevant to the needs of the organisation and the group of employees you will be consulting.

You should think carefully about what issues are appropriate to consult on and who needs to be consulted in the organisation. It might be that only senior managers will have the authority to make certain high-level changes but all employees could contribute to discussions.

For example, if you're an employer deciding whether to introduce working from home to one part of your organisation you could consult the people it will affect. It could also be useful to consult with people from the parts of the organisation that are not having working from home introduced.

This could help you understand how fair employees think this change is, and if there are any other changes that could be made in other parts of the organisation.

As an employer, you might wish to limit the range of subjects open to consultation, for example because of confidential business information. You should consider carefully whether it's appropriate to limit the subjects you will consult on and make sure that the decision to limit is fair and transparent.

To avoid misunderstandings and possible conflict in the organisation, management and recognised trade unions could agree on the issues that employees will be consulted on.

## When consultation is legally required

In certain circumstances consultation is legally required and involves a specific process. This includes:

- 'collective consultation' when an employer proposes to dismiss and rehire or plans to make redundant 20 or more employees
- consultation on health and safety matters
- if a formal agreement is in place to inform and consult employees
- consultation on some employment contract changes
- informing and consulting before a TUPE transfer

[Find out more about when consultation is legally required](#)

## Good practice consultation

As an employer, you could hold regular 'good practice consultations' with staff about smaller issues where employees might have an interest. For example, you could hold a consultation to find out how employees feel about a new training platform, new equipment or the introduction of a working from home policy.

## 3. When consultation is required

In certain circumstances consultation is legally required and involves a specific process.

If you're an employer and you're not sure whether you need to consult in your situation, you could choose to carry out consultation anyway to help avoid any risks. You should get [legal advice](#) if you want to check if it will be a legal requirement.

## Collective consultation

'Collective consultation' is when an employer consults with a recognised trade union or employee representatives.

An employer must collectively consult if they propose to dismiss and rehire or propose to make redundant 20 or more employees:

- at one establishment
- within a period of 90 days or less

An 'establishment' might be wider than a single workplace, but not necessarily as wide as the whole organisation.

Employers must collectively consult to explore how to:

- avoid the dismissals or redundancies
- reduce the number of dismissals or redundancies
- limit the consequences of the dismissals or redundancies within the organisation

The law says employers must start this consultation 'in good time'. What counts as in good time will depend on the circumstances. However, they must start consultation:

- at least 30 days before the first proposed dismissal or redundancy, if there are between 20 and 99 employees
- at least 45 days before the first proposed dismissal or redundancy, if there are 100 or more employees

## If employers do not collectively consult

If employers do not meet collective consultation requirements, employees can make a claim to an employment tribunal.

If the claim is successful, employers might have to pay their employee or employees compensation (a 'protective award'). This can be up to 90 days' full pay for each affected employee.

## Health and safety

By law, employers must consult with employees on health and safety matters.

If a recognised trade union has safety representatives, employers must consult with them on matters affecting the employees they represent.

Employers must also consult any employees not in groups covered by trade union safety representatives. Employers can choose to consult directly with the employees or their elected representatives.

[Find out more about consulting on health and safety from the Health and Safety Executive](#)

## The Information and Consultation of Employees (ICE) Regulations

If there are 50 or more employees in the organisation, they have the right to request a formal agreement to be informed and consulted on important matters and decisions.

This agreement is also known as an ICE agreement because it's part of the 'Information and Consultation of Employees' regulations.

[Find out more about informing and consulting at work](#)

## Making changes to employment contracts

In certain circumstances employers have to legally consult over employment contract changes. They should fully consult with all affected employees and any relevant employee representatives.

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

## Redundancy

By law, employers must hold collective consultation where all of the following apply:

- they're proposing 20 or more redundancies
- the redundancies are in one establishment – not necessarily in the organisation as a whole, which may be much larger
- they plan to make the redundancies within 90 days

Employers should also consult with employees individually.

[Find out more about collective consultation for redundancy](#)

### If there are fewer than 20 redundancies

As an employer, if you're making fewer than 20 redundancies, you do not need to collectively consult unless there's an agreement to do so. However, it's still good practice to collectively consult if you can.

You should still consult your employees individually but you could also consult them in small groups.

[Find out more about holding redundancy consultations](#)

## Dismissals

By law, employers must hold collective consultation if:

- the reason for the dismissal is 'for some other substantial reason' and not related to the individual
- they're proposing 20 or more dismissals
- the dismissals are in one establishment – not necessarily in the organisation as a whole, which may be much larger
- they plan to make the dismissals within 90 days

It might be considered 'some other substantial reason' if, for example:

- their business is in severe financial distress
- they've already made exhaustive attempts to reach agreement on changes
- there's genuinely no other option but to dismiss someone

For this type of dismissal, employers must follow the same process as for [collective consultation in redundancy situations](#).

## TUPE

Before a TUPE transfer, both the old and new employers must inform and consult with staff representatives (trade union or employee representatives) to explain why the transfer is happening and any changes they're proposing.

Employers must consult with trade union or elected employee representatives about any changes to working practices they're planning as part of the transfer.

[Find out more about TUPE transfers](#)

## 4. Holding a consultation

As an employer, how you consult with employees will be different depending on your organisation and the issue you want to consult on. It's important for you to carefully choose the sort of consultation procedure that will best suit your organisation's structure and culture.

Factors you might want to consider include:

- the size and structure of your organisation
- the quality of employment relations
- the management style
- the issues to be discussed
- whether trade unions are recognised

Some employees and managers may find a period of change difficult. You should offer help and support, for example through an employee assistance programme (EAP) if there is one.

## Before starting the consultation

Consultations must always be a genuine two-way discussion about whether a change is needed and what kind of change is appropriate.

Everyone involved must have the chance to have their views heard and be able to discuss the issues in a meaningful way. Employers must listen openly to any concerns or suggestions and genuinely consider them.

Before starting a consultation employers should decide on the method of consultation and inform staff:

- what the decision-making process will be
- how long the consultation will last
- what changes are being considered and why

There are no rules for how long consultation must last, unless the employer is holding a collective consultation. Employers should check if they have a policy or agreement in place that does set out rules about how long consultation must last.

Employers should also check whether there are any legal requirements that apply to the changes they're proposing as this might affect how they consult.

[Find out more about when consultation is legally required](#)

## Deciding who to consult

Employers should consult with all the employees who are affected by the issues or proposed changes. This includes anyone who might be absent from work, for example people who are off sick or on adoption, maternity or paternity leave.

Employers might also have a voluntary arrangement in place which means they could also consult with the organisation's:

- joint consultative committee who work to promote good practice in the way an organisation is managed
- joint working party who consider and suggest ways of resolving specific issues affecting the organisation

Depending on the circumstances, by law employers might also need to consult with employee representatives. If you're not sure, you should get [legal advice](#).

## Consulting with employee representatives

If employers need to consult with employee representatives, they should encourage the representatives to speak on behalf of employees.

Representatives need to be able to:

- tell employees about the proposals and share information
- ask employees for their views, suggestions and any questions they may have
- talk to other representatives and work out a collective staff response
- meet with management and give feedback on the staff response
- engage in open discussions to solve problems and reach agreements
- tell employees the outcome of consultations

By law, trade union and employee representatives have the right to:

- reasonable paid time off for trade union duties
- reasonable time off for training
- reasonable access to employees and workplace facilities

Employers must not dismiss someone or treat them unfairly because they're a trade union or employee representative.

[Find out more in the Acas guides on trade union and employee representation](#)

## During the consultation

Employers should invite employees and their representatives to suggest ideas and talk about their concerns. Employers should consider their ideas and do anything they can to resolve any concerns.

As an employer, you can demonstrate your commitment to listening to employee feedback by taking an active role in consultation. For example you could:

- chair a consultative committee meeting
- participate in staff meetings
- talk to your employees directly

Direct communication between senior managers and employees can help to keep the chain of communication as short as possible. However, it's important that line managers and supervisors are also kept informed.

Line managers and supervisors are also responsible for passing on information in both directions and giving instructions to employees.

Once the consultation has ended, employers will need to make a decision on the next steps.

[Find out more about making a decision after a consultation](#)

## Having a consultation policy

Employers should make sure that how they consult employees matches the organisation's consultation policy, if there is one.

If the organisation does not have a consultation policy, it can be helpful to create one with the involvement of employees and their representatives.

A policy can set out:

- the purpose of holding consultations
- the importance of consultations being a two-way process
- the responsibility for communication at each level in the organisation
- the methods of consultation
- how consultations will be run and how employees can participate
- training available for people involved in the consultation process
- how the policy will be monitored

## Training in consultations

Training for managers and employee representatives can help all those involved in consultation keep discussions constructive and encourage helpful behaviours like:

- listening effectively
- not making assumptions about others
- not insisting on a fixed outcome
- considering other suggestions
- genuinely exploring other people's needs and interests
- being willing to consider things objectively



- avoiding confrontational language or appearing aggressive
- being patient
- not adopting an attitude where someone must win and someone must lose
- being open to creative ways of finding workable solutions

[Find out about Acas tailored training for your organisation](#)

## 5. Making a decision

Everyone should be open-minded during consultation.

It's important that employers take on board all the comments made by employees and their representatives during the consultation. After the consultation has ended, employers can:

- change their original suggestions and set out new proposals
- reject the views given by employees and their representatives
- decide not to go ahead with any changes

Whatever the employer chooses to do, they should set out the reason for their decision.

### If an employer decides to make changes to the proposal

As an employer, you should be prepared to reconsider your original proposal, for example if:

- there's something you might have overlooked
- another proposal is put forward that might work better

If you decide to make changes, you should give employees and their representatives recognition if their views and ideas played a part.

### If an employer decides to go ahead with the original proposal

As an employer, you do not have to act on the views of employees and their representatives if there's a good practical or financial reason for doing so. However, you should:

- set out all the considerations made for not taking their views into account
- after taking into account the considerations, carefully explain the reason for rejecting their views

You must never intimidate or threaten employees or their representatives to try to force them to agree to a change. You should carefully consider the best way to have discussions about how the organisation and its employees might be affected if you cannot agree acceptable changes.

### If an employer decides not to go ahead with any changes

As an employer, if you decide not to go ahead with any changes, you should make it clear whether it's something that is going to be reviewed again in the future.