

TUPE: managing redundancies

1 . When redundancy can happen

Your employees have their usual rights to 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, you should consider all the options to reduce or even avoid redundancies. [Find out more about avoiding redundancies](#).

If you're starting a redundancy process and have any questions you can [contact the Acas helpline](#).

Before a TUPE transfer

The employer taking on the transfer (the new employer) and the employer making the transfer (the old employer) cannot make any redundancies before a TUPE transfer if the reasons relate to the transfer.

For example, the old employer cannot reduce the workforce to make the organisation or service cheaper to run, to try to find a buyer. And the new employer cannot ask the old employer to make redundancies before the transfer. This would be considered an [unfair dismissal](#).

If the new employer is planning to make 20 or more redundancies at the same establishment within the same 90 day period after the transfer, they might be able to start a [collective consultation](#) with the affected staff before they transfer, if the old employer agrees. It must start at least 30 days before anyone is made redundant.

You can make staff redundant before a TUPE transfer if the redundancies are unrelated to the transfer, following the usual [redundancy process](#).

After the transfer

Once staff have transferred, both employers can only make redundancies related to the transfer if there is both:

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

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

A change in the workforce could mean:

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

ETO reasons include:

- essential cost-saving requirements (economic reasons)
- using new processes or equipment (technical reasons)
- making changes to the structure of an organisation (organisational reasons)

If you need to make redundancies in particular roles or teams, you must:

- treat transferred staff in the same way as staff who've worked there longer
- 'select staff in a fair way and do not disadvantage the staff who've transferred
- [consult fully with employees or their representatives](#) about the proposed selection methods and criteria

Making redundancies unrelated to the transfer

If the reason for redundancies is not related to the transfer, you could make redundancies following the usual redundancy process. You do not need an ETO reason involving a change in the workforce.

[Find out more about managing staff redundancies](#)

2. Holding a consultation

By law, you must talk and listen to ('consult') any of your employees affected by redundancies, even if they're not at risk of redundancy themselves.

You should clearly explain the purpose of the consultation and how it will affect them.

No employees can be made redundant until after the transfer.

If you do not hold genuine and meaningful consultation before making redundancies, employees could make a claim to an employment tribunal for [unfair dismissal](#).

If you're making fewer than 20 redundancies

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

[Find out more about redundancy consultations](#)

If you're making 20 or more redundancies

If you're making 20 or more redundancies, you must first consult with a recognised trade union or employee representatives ('collective consultation') at least 30 days before making any redundancies. You must also consult your employees individually.

Check if you need to hold collective consultation

Collective consultation is where you must consult on your redundancy plans with any recognised trade union, or if there is not one, employee representatives.

You must collectively consult if all of the following apply:

- you're planning 20 or more redundancies
- the redundancies are in [1 establishment](#) – not necessarily in your organisation as a whole, which may be much larger
- you plan to make the redundancies within a 90-day period

You should also consult with employees individually.

When you can start collective consultation

By law, collective consultation must start at least 30 days before anyone is made redundant.

If both employers agree, the new employer can start collective consultation with affected staff before they've transferred from their old employer.

If you start collective redundancy consultation before the transfer, you must:

- not select or dismiss any employee for redundancy until after the transfer
- continue consulting with staff representatives once the employees have transferred, if collective consultation has not been completed
- carry out individual consultation with affected employees after the transfer

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

Example of pre-transfer collective consultation

DiggingCo wins a contract to carry out pipe work for UtilitiesCo. They will take on staff from Excavate Ltd as part of the transfer but there will not be enough work for both sets of employees. DiggingCo decides there is potential for 22 redundancies. Before the transfer, DiggingCo and Excavate Ltd agree to begin consultation at an early stage. They consult with elected representatives and employees about the transfer and redundancies at the same time. No redundancies are made before the transfer.

3. If employees refuse to transfer

Any employees who refuse to transfer, or who wish to leave after transferring, must tell you in writing.

They would usually have no rights to claim:

- redundancy pay
- unfair dismissal

Find out more about dealing with staff who:

- [do not want to transfer](#)
- [transfer but then decide to leave](#)

4. Responsibility for redundancy pay

Before a TUPE transfer, the old employer may decide to make employees redundant for reasons unrelated to the transfer. In this situation, the old employer is responsible for their employees' redundancy pay.

After a TUPE transfer, if the new employer makes any employees redundant, they'll be responsible for their redundancy pay. The new employer may have included these redundancy costs in the commercial agreement to buy the business or service.

Working out redundancy pay

In a TUPE transfer, employees who transferred to the new employer keep their original terms and conditions of employment. Their terms and conditions might include a different amount of redundancy pay to other employees.

The new employer should check employees' employment contracts, company policies and collective agreements to see if they might need to pay them more than the legal minimum ('statutory') redundancy pay.

Redundancy pay will need to include employees' carried-over:

- length of service
- contractual rights to any enhanced redundancy pay

[Find out more about how to work out redundancy pay.](#)