



THE MERITAS GUIDE
TO EMPLOYMENT LAW ON A BUSINESS SALE
in Europe, Middle East and Africa
April 2015



“What I truly appreciate about working with the Meritas network is knowing that, no matter which Meritas firm I engage, I’m going to get excellent work and superb service.”

*Meredith Stone
Vice-President General Counsel Americas
NACCO Materials Handling Group, Inc.
(NMHG)*

CONNECT WITH CONFIDENCE TO A MERITAS LAW FIRM

Meritas began in 1990 as a result of a US lawyer becoming frustrated at the inconsistent service he received when referring instructions to other US states. He started to develop his own criteria for evaluating performance and service, and from those beginnings Meritas has evolved into an integrated, non-profit alliance of almost 180 independent commercial law firms located in over 70 countries.

When you work with Meritas you will have no fewer than 7,000 experienced lawyers at your disposal, all around the world, in firms that are carefully evaluated and selected and whose work is quality controlled by Meritas.

This guide has been produced by the Meritas Europe, Middle East and Africa Employment Group which is an ongoing

collaboration between 34 local firms on multi-jurisdictional labour and employment law issues.

The Group also enables member firms to share information on substantive and procedural developments in their local markets, to stay current on new and emerging workplace issues and further improve client service.

For help and advice in relation to the employment law aspects of a business sale please contact the Meritas member law firm in the relevant jurisdiction in this guide. Each firm offers substantive and procedural knowledge in every facet of workforce management, including negotiating complex employee relation issues, providing advice and representation on expatriation, and merger/transfer employment issues.

ABOUT THIS GUIDE

Employee rights when businesses are sold/transferred in Europe stem largely from the EU Acquired Rights Directive (Directive 2001/23).

So it is no surprise that there are similarities and common themes across European jurisdictions, namely;

- The automatic transfer principle (automatic transfer of employees from the old to the new owner, along with their contractual terms);
- Protection against dismissal by reason of a transfer;
- Employer obligations for employees (or their representatives) to be informed (almost all countries) and consulted (most countries) in relation to the transfer.

However, there are still many differences across European jurisdictions, including;

- Variation in the definition of a transfer of a business/service to bring it within the scope of the acquired rights regime (in many countries this will go beyond just a straight forward business sale).

- The consequences of a refusal by employees to be transferred;
- Sanctions imposed for failure to inform and consult and for dismissing by reason of a transfer;
- Rules in relation to small/micro employers.

In the Middle East and Africa the law is different again.

The purpose of this guide is to give HR managers, in-house legal counsel and commercial managers an overview of employee rights and employer obligations when businesses are transferred, so they can better negotiate and implement cross-border transactions, but also more effectively manage staff transferring in and out of different jurisdictions.

The guide answers four key questions:

1. Do employees automatically transfer to the buyer when a business is sold?
2. Are there information and consultation (or other) obligations?
3. Can a buyer change employees' terms and conditions after a sale?
4. What are the sanctions against non-compliant employers?



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I. DO EMPLOYEES AUTOMATICALLY TRANSFER TO THE BUYER WHEN A BUSINESS IS SOLD?

The Hungarian Labour Act defines a business transfer in line with the provisions of EC Directive 2001/23 of 12 March 2001. As such the rights and obligations arising from employment relationships existing at the time of the transfer of an economic entity (organised grouping of material or other resources) are transferred to the transferee employer.

This means that if it is established that by way of a transaction an organised group of resources are transferred, and this group of resources maintains its identity, then the business transfer takes place automatically and the parties cannot elect to opt out from the automatic transfer provisions.

Any effected employees have the right to terminate their employment relationship with regard to the business transfer for cause within 30 days, if the transfer involves a substantial change in working conditions

to the detriment of the employee, and in consequence maintaining the employment relationship would entail unreasonable disadvantage or would be impossible. In such an event, the employee will be eligible for all the allowances he/she would get in a case of termination of employment by the employer (i.e. severance payment, time allowance, etc).

It is to be noted however, that if the transfer takes place in the context of a liquidation procedure then different rules will apply.

2. ARE THERE INFORMATION AND CONSULTATION (OR OTHER) OBLIGATIONS?

The most important obligation of the transferor and the transferee is that they give notice of the transaction to the employees or, if applicable, to the Workers' Council in advance.

In addition, the transferee is required to inform the employees of any changes to their work conditions within 15 days following the closing of the transaction. It is important to note that both the transferring and the receiving employer will be jointly and severally liable in respect of any employee obligations that arose prior the date of transfer, if the employee submits a claim within one year from the date of transfer.

3. CAN A BUYER CHANGE EMPLOYEES' TERMS AND CONDITIONS AFTER A SALE?

Within the frameworks set out by the relevant legal provisions, the employment contract and, if there is one, a collective agreement, the employer is entitled to unilaterally define and redefine certain aspects of the employment (i.e. the daily work schedule, any allowances and benefits payable on top of the base salary, or other benefits or specific responsibilities relevant to a certain role, etc).

The transferee may decide to change such conditions (bearing in mind the relevant notice requirement and the employee's right to terminate) but any issues that are regulated in the employment agreement itself can only be modified by mutual consent of the parties.


Section 282 of the Labour Code additionally sets out that the receiving employer is required to maintain the conditions specified in any collective agreement existing at the time of transfer for a period of one year after the date of transfer. This does not apply if the collective agreement expires within one year after the date of transfer, or if the employment relationship is covered by a collective agreement after the date of transfer. Previously, the work schedule was exempt from such an obligation however the new legislation has made it clear that it does now apply to the work schedule.

4. WHAT ARE THE SANCTIONS AGAINST NON-COMPLIANT EMPLOYERS?

The key risk is that the employee or the Workers' Council may challenge the unlawful action of the employer in court.

In cases where there has been a business transfer by law but the receiving entity has not taken on the employees of the transferring entity, the court may rule that the existing employment contract was terminated contrary to the provisions of the Labour Code without a justified cause and apply the sanctions available for unlawful termination (including a requirement to pay the equivalent of up to 12 months' average salary).

As a general rule, an employee may not however claim that his employment contract be reinstated – given that both the transferor and the transferee have joint and several liability.



Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.