



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?



CONTACT

Siemer-Siegl-Füreder & Partner
www.ssfp-law.at



Mr. Gerald Gries
Tel: +43 | 512 | 445
gries@ssfp-law.at

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

In Austria, all labour law questions concerning the transfer of business are ruled by the Arbeitsvertragsrecht-Anpassungsgesetz (AVRAG), EU Regulations 77/187/EWG and RL 98/50/EG and the Arbeitsverfassungsgesetz (ArbVG). The AVRAG serves to protect the employee when operations are transferred and notes that a dismissal of the employee is invalid during this period.

If a company is transferred to another owner, this new owner enters into the employment contract as the new employer and assumes all existing rights and obligations.

This means that in all kinds of business transfers the employment obligations pass to the new employer as a matter of law (ex lege). The employment stays the same and is not subject to change. These rules do not however apply to national and state employees, homeworkers or employees of companies that are insolvent.

Employees can only seek a termination of their employment contract if their working conditions worsen in a significant way. The termination must only be effected by the business transfer and has to be communicated within one month after the change of employer.

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

Most importantly, the transferor or transferee has to inform the employees about their intention before the transfer including to any Works Council, if such exists. If there is no Works Council they must inform the employees affected by the transfer of business in writing, detailing the exact time of the transfer, the consequences of the transfer and any arrangements that will take place.

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

This depends on whether the transfer is a 'singular succession' or a 'universal succession'.

A singular succession means that in the course of the transfer the previous business ceases to exist. In such instances, the new contract owner/employer has to abide by the employees' current employment contracts especially concerning pension promises. In such cases, the new contract owner/ employer assumes all of the legal statuses of its predecessor.


Universal succession means that in the course of the transfer the previous business continues to exist. In such instances, the new contract owner/employer, under certain circumstances, may not have to abide by any previous pension promises.

In both instances, the terms of the prevailing employment contract continue to apply.

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

Non-compliant employers face the risk of administrative penalty proceedings with considerable possible fines of up to €7,500. Furthermore, employees have the possibility to claim damages as a consequence of a non-compliance.

Especially if employment contracts are terminated in violation of the legal provisions, the employee can claim a compensation.



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.