



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?

Upon a transfer of (or part of) an undertaking to another employer, employees are automatically transferred thereto. Consequently, the transferee becomes a party to any existing employment relationships by operation of law, and the transfer is neutral for the employees. Employees cannot effectively oppose such transfer to the transferee.

The transferor and transferee cannot effectively void any effects of the transfer regarding employees – any agreement to do so will be held to be invalid and ineffective.

A transfer of employees can also occur upon a cross-border transfer involving a Polish employer of employees.

The individual employment contracts of any transferring employees and all provisions of internal legal acts of the transferor (e.g. work and salary rules; collective agreements, etc)

resulting in claims (e.g. for bonuses or fringe benefits) are transferred to the transferee. Such provisions somehow supplement the employees' individual employment relationships. However, the transferor's internal acts are not transferred to the transferee.

The transferee is not obliged to conclude new employment contracts because the existing contracts will remain in force in the existing wording.

Within two months after the transfer to another employer, any transferring employee can terminate their employment with seven days' advance notice. The effect of such termination for the employee is the same as termination by the employer with notice under the relevant labour law.

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

The main obligation of the transferor and transferee is to notify their own employees of:

- a) The planned date of the transfer of (or part of) an undertaking to another employer;
- b) The main reasons for the transfer;
- c) The legal, economic and social effects on employees; and
- d) Any planned measures regarding employees' employment terms, especially the terms of work, pay and re-qualification.

If trade unions operate at the employer's business they should be so notified. Likewise, if the existing or transferee employer intends to start actions affecting employees, it should negotiate an agreement on that with the unions. Such notice should be given in writing no less than 30 days before the planned date of the transfer.

If there is a workers' council at the employer's business it should be notified of and consulted about the planned transfer, however its opinion as to the merits/demerits of such a transfer is not binding.

In certain cases, upon the transfer of an undertaking, part or all of the resources, receivables and payables of the transferor's social security fund should also be transferred to the transferee. In certain cases, an agreement on that should be executed.

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

As a rule, following the transfer of employees, the transferee can unilaterally change their terms of work and pay but must justify it properly (e.g. in order to avoid unequal treatment between new and existing employees (discrimination)). The transfer per se cannot be a reason for the change.


If a collective agreement applied at the transferor business, its provisions giving rise to claims, taken over by the transferee, cannot be changed unilaterally for a year after the transfer. Thus, they can be changed following the first anniversary.

Terms of work and pay can always be changed by mutual agreement, i.e. upon the employee's consent.

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

Failure to notify trade unions of the planned transfer is a misdemeanour punishable with a fine up to PLN 1,080,000 or freedom limitation.

Upon such transfer, the transferor should take steps to promptly eliminate any differences in work or pay terms of both transferring and existing employees, even if such changes may result in the (dis)advantage of individual employee groups. Failure to take such steps may result in a breach of the ban on discrimination and liability in damages of the transferor.



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.