



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?

Directive 98/50/EC relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of businesses was transposed into Greek law via Presidential Degree 178/2002. The latter applies to every contractual or statutory business transfer, merger, takeover or acquisition of a company or any part of it to another employer. It does not apply to ships and vessels, to share deals, bankruptcy or other insolvency proceedings of the transferor as well as to transfers within the public sector.

In the event of cross-border transfers, in addition to Greek law the applicable European legislation should be taken into consideration.

The protection provided by law covers all the transferor's employees with an effective employment contract at the date of the transfer, whether it is for a fixed or indefinite

term (e.g. suspended employees, trainees, employees on leave, etc). All existing rights and obligations of the transferor relating to employment agreements or relationships are automatically transferred on the transfer date.

Until completion of the transfer both the transferor and the transferee will be jointly and severally liable for all obligations arising from any employment contract/relationship. Upon completion of the transfer the transferee shall be bound by all employment terms including collective bargain contracts (CBC) and arbitral decisions, but they are entitled to terminate or modify any private insurance scheme in case the relevant costs are disproportional to the transfer.

Transferred employees reserve the right to terminate their employment contracts before or after the transfer and are always entitled to resign.

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

The employee representatives should be informed about the transfer, the date and reasons of the transfer, any potential consequences (social, economic, legal, etc) affecting the employees, and the measures to be taken so that any negative consequences may be prevented.

The transferor should inform the representatives prior to the transfer, while the transferee must provide information to them before the transfer directly affects the employees. The employees' consent is not considered as a prerequisite for the transfer.

Consultation procedures between the transferor, the transferee and the employee representatives are required prior to the transfer. Such consultation should entail a discussion in relation to any measures that may affect the employment conditions. The consultation should be carried out in good faith in view of reaching a consensus, whose failure shall not prevent the transfer.

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

The transfer should not affect the terms and conditions of employment agreements/ relationships or any employee rights and obligations existing at the time of the transfer.


This rule refers, inter alia, to the employee's salary, professional development issues, voluntary benefits, rights in relation to the years of service (i.e. severance payment), etc. The transferee is not entitled to introduce any detrimental changes to the employment terms and conditions without the employees' prior consent. In any case, it is a factual issue whether any amendments to the employment contracts are detrimental or equivalent to the formerly applicable.

CBCs can be renegotiated by the transferee even in situations where the changes are detrimental to the employees. The transferee will, however, be bound by the former CBC for a period of six months after its termination.

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

In cases where the transferor or the transferee fails to properly inform and consult with the employee representatives a fine ranging between €147 - €8,804 may be imposed.

Employees may not be dismissed by the transferor or the transferee for reasons relating to the transfer. If this does occur, the dismissal will be considered illegal and unfounded. However, dismissals in compliance with the national Labour Legislation are permitted.



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.