



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

Except in cases where there is a complete transfer of ownership of a company, there is no automatic transfer of employees and their rights when undertakings (businesses/ contracts) are transferred in the United Arab Emirates (UAE). However, there are a number of practical details that must be considered.

In such situations, there is a transferor (Company A) and a transferee (Company B). Company B is not obliged by UAE law to transfer any of the employees from Company A. However, if Company B decides to retain Company A's employees post-transfer, Company B must allow the employees to decide whether they want to continue their employment with Company B. In any case, all of the employees' UAE residency visas sponsored by Company A will need to be cancelled by Company A and re-processed under the sponsorship of Company B.

If an employee terminates his employment, Company A is obliged to pay the end of service gratuity due to the employee under UAE Federal Law No (8) of 1980 (known as the UAE Labour Law). If any employee wishes to continue his employment with Company B, they must be allowed to decide between the following two scenarios:

- a) They receive their end of service gratuity from Company A and then begin a new employment contract under Company B; or
- b) Company B will sign an undertaking stating that at the end of the employee's tenure, Company B will pay the end of service gratuity for the employee from their original start date with Company A.

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

There are no obligations under UAE law for the transferor and transferee businesses with regard to informing and consulting transferring employees.

Practically speaking, the businesses will notify employees of the transfer in order to arrange for end of service gratuity payments to employees not wishing to continue their employment with Company B.


Company B will be responsible for sponsoring the UAE residency visas and adhering to the employment contracts of any transferring employees.

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

Company B may renegotiate employment contracts post-transfer however changes may not be made unilaterally. Both Company B and the employees must agree to any employment contract changes. Should there be any changes to an employment contract, both Company B and the employee must sign an addendum to the labour contract. The new employment contract must then be registered with the UAE Ministry of Labour.

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

Should there be any breach of any provision under the UAE Labour Law, the employee can file a claim with the UAE Ministry of Labour. The Ministry of Labour will conduct mediation between the employer and the employee. Failing a resolution during mediation, the employee may file a claim with the Dubai Courts. It is at the discretion of a judge at the Dubai Courts to make a ruling on the merits of the case.



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.