

Finland

Employment protection in relation to business transfers

Phase	Act on Cooperation (1333/2021), Employment Contracts Act (55/2001), Collective Agreements Act (436/1946)
Native name	Yhteistoimintalaki (1333/2021) Työsopimuslaki (55/2001), Työehtosopimuslaki (436/1946)
Type	Employment protection in relation to business transfers
Added to database	23 September 2016
Access online	Click here to access online

Article

55/2001: Ch.1, Sec. 10; Ch. 6, Sec. 6; Ch. 7, Sec. 5-6; Ch. 13, Sec. 4

Description

In Finland, legislation surrounding a transfer of undertaking applies during:

- the transfer of an economic entity which retains its identity after the transfer (e.g. the sale of a business or merger), and
- a 'service provision change' (i.e. outsourcing, bringing activities in-house, or a change of contractors).

The Finnish Employment Contracts Act (55/2001) does not exhaustively define the concept of a 'transfer of an undertaking' and therefore its existence will be determined on a case-by-case basis. In general, the deciding factors are:

- the legal relationship, e.g. contract for sale or statutory merger, between the transferor and the transferee (this relationship can also be implied);
- the concept of 'operative identity' of the business;
- the continuity of operations without interruption after the transfer (the business should continue without any major delay but not necessarily immediately) and

- a change of employer.

The sale or purchase of shares does not qualify. Mergers and de-mergers may be comparable to a transfer of undertaking and thus, be regulated under this legislation. However, the death of an entrepreneur or bankruptcy do not constitute transfers of undertaking.

The transferee may not dismiss an employee merely on the grounds of the transfer. In general, all affected employees (including those on fixed-term contracts) are protected by this legislation. Employees on parental (or other) leave are also transferred, however employees whose main duties and activities are outside the business or department being transferred, or those temporarily seconded to such activities will not be transferred.

The transferee must assume all rights and obligations laid out in the employees current employment contract or collective agreements. This includes the employment history of the employee so that the actual length of time in the position which they continue to fill is taken into consideration when determining benefits based on length of service. As pensions in Finland are mandatory, the employer is not required to pay any contributions to individual pension funds other than the mandatory TyEL-pension insurance to which all employers are liable. Employees also retain a special termination right which allows them to terminate the contract upon or immediately after a transfer if the conditions do not seem beneficial to them.

The transferee and transferor are jointly liable regarding employee claims that derive from the employment period up to and during the transfer.

The new employer is not entitled to make changes to general employment contracts. Explicit and informed consent by the employee can in some cases result in a change of employment contract, however if such changes are seen to be detrimental to the employee they can be considered void. Changes may be implemented in lieu of termination if grounds for termination exists.

Collective agreements are regulated by the Finnish Collective Agreements Act (436/1946) which states that the terms of a binding collective bargaining agreement supersede conflicting terms which are detrimental to the employee. In many sectors, unorganised employers are also bound by collective agreements based on the principle of general applicability of collective agreements.

Pre-existing contracts can only be terminated by the transferee or transferor according to the employers' normal right to maintain or terminate a contract. The employee has the right to terminate the contract, however if it is seen that a contract is terminated due to a substantial weakening in the contract agreed upon by the transferee, this termination can

be viewed as a result of the transfer.

The Act on Cooperation (1333/2021, fin. yhteistoimintalaki), the applicability of which is limited to companies regularly employing 20 or more employees, imposes an obligation on workplaces to maintain a continuous dialogue between the employer and its personnel. The employer must have a regular dialogue with the employee representative to develop the company's operations and the work community. The dialogue must take place at least 2-4 times a year, depending on the number of personnel, unless the employer and the personnel representative agree otherwise. For example, in the absence of a staff representative, the dialogue can be carried out by dealing with the issues that are the subject of the dialogue at a joint event organized annually.

How dialogue is organized in the workplace must be agreed upon separately at the workplace. The dialogue is basically carried out in meetings between the employer and the personnel representative. Dialogues should be organized even if the company has no organizational changes planned.

Commentary

The legislation related to business transfers is considered to be rather difficult. Especially the local government sector, where privatisations, corporatisations and tendering procedures frequently reshuffle the service structure, is often affected, and the Trade Union for Public and Welfare Sectors (JHL) claims that employment protection disputes related to public sector business transfers are relatively frequent. However, the Local Government Employers (KT) argues that considering the size of the local government sector (nearly half a million employees), and the 250-300 dismissals annually, the phenomenon is rather insignificant.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

- [Act on Cooperation within Undertakings \(334/2007\)](#)~~~ [Laki yhteistoiminnasta yrityksissä \(334/2007\)](#)~~~ [Employment Contracts Act \(55/2001\)](#)~~~ [Työsopimuslaki \(55/2001\)](#)~~~ [Collective Agreements Act \(436/1946\)](#)~~~ [Työehtosopimuslaki \(436/1946\)](#)~~~ [YLE, 'Työntekijät haastoivat kaupungin oikeuteen Järvenpäässä ja vaativat puolen miljoonan euron kovauksia', 26 January 2017](#)~~~ [Yhteistoimintalaki \(1333/2021\)](#)~~~

Citation

Eurofound (2016), Finland: Employment protection in relation to business transfers, Restructuring legislation database, Dublin