

## France

# Employment protection in relation to business transfers

<b>Phase</b>	Labour Code
<b>Native name</b>	Labour Code
<b>Type</b>	Employment protection in relation to business transfers
<b>Added to database</b>	23 September 2016
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## Article

L.1224-1 to 1224-3-2; L. 2261-14

## Description

French legislation (Labor code, Article L. 1224-1) defines a transfer of undertaking as 'a change in the legal status of the employer, including without limitation through inheritance, sale, transformation of the business, or creation of a company', however this list is not exhaustive and courts will examine the circumstances as a whole to determine if a transfer of economic entity has occurred. Transfer of a company's ownership of the assets is not required; a lease of the business ('location-gerance') can constitute a transfer. In general, a transfer refers to the change in management of an autonomous legal entity (or part therefore) where the activity is continued and retains its own identity.

According to case-law, the provisions of Article L. 1224-1 of the French Labour Code are a matter of public policy. Thus, any clause in an agreement for the transfer of an autonomous economic entity that provides for the takeover of only part of the workforce is deemed to be unwritten.

However, a transfer does not apply during the taking over of an undertaking in financial difficulties by its former employees. Furthermore, since December 2016, in the framework of an employment security plan designed in a company with at least 1,000 employees, the previous employer can be allowed to dismiss employees before the transfer. The new

employer is then committed to only takeover the employees figuring on the payroll on the day of the transfer (Labour Code, [article L. 1233-6](#)).

As the transfer of an undertaking is an effect of the law, the employer is not obliged to notify the employee. Article 7(6) of the Directive of 12 March 2001, which provides for employees to be informed in advance of the transfer of an undertaking in the absence of staff representatives, has not been transposed into national law, so that it cannot create an obligation on the part of the outgoing employer.

All employment contracts (short-term and permanent contracts; work-study and apprenticeship contract, full-time or part-time) in force at the time of such an event are considered to be transferred to the transferee, and changes cannot be made to such contracts outside of normal operational law. The transferee takes over all such elements of the individual employment contract including:

- Length of service with the previous employer,
- the amounts and types of remuneration and their method of calculation,
- position, classification, place of work etc.

Although contracts terminated prior to the transfer are not transferred, some rights and obligations concerning previously dismissed employees may be transferred including:

- The rights and obligations under a non-competition undertaking
- the right of a redundant employee to priority for rehiring
- the right to reinstatement of a 'protected' employee in the event that his or her dismissal is found to be void.

Salaried employees shall also continue to receive all benefits provided by the previous employer, including profit sharing benefits

The state pension system is not affected by a transfer. However, the complementary pension system must also be maintained, with the new employer (transferee) paying the same contributions as the previous employer (transferor).

If the employees are covered by a collective agreement, and no change in main activity occurs, there will be no change to the collective bargaining agreement (CBA) as it will apply to all companies in the same sector.

However, if the main activity changes, the CBA still remains active until the signature of a new collective agreement, or at least for a period of 15 months after the collective agreement has been terminated. If no agreement has been reached after that time, the previous agreement expires. After this period, the employees of the transferred company

will be able to avail themselves of the benefits arising from the old collective agreements' provisions only if they have benefited from them. These are individually acquired benefits, which will be included in the employment contract of the employees concerned. Therefore, different working conditions may exist between old and new employees.

A specific provision (Labour Code, [article L. 1224-3](#)) applies if the previous employer is a private employer and the transferee a public body. In that case, the public body has to take over the employees under a public employment contract of the length of the previous employment contract (permanent or short-term contract).

## Commentary

Both the employees and the employer are bound by the terms of [article L.1224-1](#) of the Labour Code. This means that if an employee refuses the transfer even though the transferee complies with the current legislation, this refusal is considered a resignation. Any attempt by the previous employer to make the employees redundant before going through the transfer process is deemed unlawful and likely to trigger financial compensation if the employee brings the case to court.

## Additional metadata

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	National government
<b>Involvement (others)</b>	None
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No threshold applies. The rule that employment contracts must be maintained in the event of a company transfer applies regardless of the size of the company.

## Sources

- [Labour Code](#)~~~ [Ministry of Labour website, Le changement dans la situation juridique de l'employeur, \(in French\)](#)~~~

## Citation

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