

Greece

Employment protection in relation to business transfers

Phase	<p>-Presidential Decree 80/2022 (Official Government Gazette A' 222/04.12.2022), "Individual Labour Law Code", as amended by Law 5053/2023 (Official Government Gazette A' 158/26.09.2023), "To strengthen work - Integration of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 - Simplification of digital processes and strengthening of the Work Card - Upgrading the operational function of the Ministry of Labour and Social Security and the Labour Inspectorate" -Circular: 58455/2017: Measures concerning the protection of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, labour inspectorate, 15 March 2017; Presidential Decree 178/2002 Measures relating to the protection of workers' rights in the event of transfers of undertakings, establishments or parts of businesses or businesses, in conformity with Council Directive 98/50/EC</p>
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Native name	<p>-Προεδρικό Διάταγμα 80/2022 (ΦΕΚ Α' 222/04.12.2022), "Κώδικας Ατομικού Εργατικού Δικαίου", όπως τροποποιήθηκε από το Νόμο 5053/2023 (ΦΕΚ Α' 158.09.2023), "Για την ενίσχυση της εργασίας - Ενσωμάτωση της Οδηγίας (ΕΕ) 2019/1152 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Ιουνίου 2019 - Απλοποίηση ψηφιακών διαδικασιών και ενίσχυση της Κάρτας Εργασίας - Αναβάθμιση της επιχειρησιακής λειτουργίας του Υπουργείου Εργασίας και Κοινωνικής Ασφάλισης και της Επιθεώρησης Εργασίας"</p> <p>-Εγκύκλιος: 58455/ 2017: Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων η επιχειρήσεων, Σώμα Επιθεώρησης Εργασίας, 15 Μαρτίου 2017; Προεδρικό Διάταγμα 178/2002 Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων ή επιχειρήσεων, σε συμμόρφωση προς την Οδηγία 98/50/ΕΚ του Συμβουλίου</p>
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
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Article

-Presidential Decree 80/2022, Section IV, 'Business Transfer', Articles: 350, 'Maintaining Employees' Rights' and 351: 'Modification of terms and termination of employment relationship', as amended by Law 5053/2023 -Circular: 58455/2017, whole (explanatory circular); Presidential Decree 178/2002 articles 1-12

Description

Presidential Decree 80/2022 is the most recent statute regulating the rights of employees in case of business transfer, codifying the respective legal provisions, including the provisions of the P.D. 178/2002, and harmonizing the Transfers of Undertakings Directive 2001/23/EC. As such, by virtue of art. 350 (Maintaining Employees' Rights):

- through the transfer and from the date thereof, all the existing rights and obligations that the transferor has from a contract or employment relationship are transferred to the successor. The transferor is jointly and severally liable with the successor for the obligations arising from the contract or employment relationship until the time the successor takes over.
- following the transfer, the successor shall continue to observe the terms of employment provided for by the collective labour agreement, arbitration decision, regulation or individual labour contract.
- with regard to the rights from any existing professional or inter-professional insurance systems, either in the form of a group plan in an insurance company, of an account operating within the context of the transferred business, or in the form of a group plan in a private pension fund, in the event of a business transfer, the following shall apply:
 - a) If the successor accepts the continuation of the insurance contract under the same conditions that applied to the transferor, the insurance contract is renewed. If an insurance company or a private pension fund intervenes, the successor renews the insurance contract with these, as well. b) If the successor accepts the continuation of the insurance contract, with terms different from those that applied to the transferor, they inform employees' representatives for the change in terms, consult with them and the transferor, and draw up a new insurance contract. If an insurance company or a private pension fund mediates, either a representative of the insurance company or the trustee of the private pension fund participates in the consultations in order to submit new proposals, for drawing up a new insurance contract, taking into account the existing numerical stock, or the existing credit balance of the pension funds management account. c) If the successor, prior to the transfer, refuses the continuation of the insurance contract either in the form of a group plan in an insurance company, (or) in the form of an account operating within the transferred business, or in the form of a group plan in a private pension fund, the relevant funds in the form of either a numerical stock or a retirement fund account, belong to the employees. In this case, the acquired rights of the employees, as well as, the rights of expectation for periodic or one-off benefits of the employees, whose employment relationship was terminated at the time of the business transfer, are ensured as follows: i. in the case of a group plan in an insurance company or in a private pension fund, the relevant funds that have been collected are cleared by the transferor and the employees' representatives, and distributed to the employees either on the basis of the numerical stock, in the case of guaranteed group schemes {guaranteed technical (discount) rate, guaranteed benefit}; or on the basis of the accumulated net contribution (case of defined contribution schemes); or on the basis of the accrued benefit; or the present value of future benefit (project benefit) (case of defined benefit plans). ii) In the case of an account operating under the transferred business, the relevant funds are cleared by the transferor and the employees' representatives, and distributed to the employees either on the basis of

the accumulated net contribution (case of defined contribution plans), or on the basis of the accrued benefit or the present value of a future benefit (case of defined benefit plans). d) if there are no workers' councils in the company a three-member committee, elected by the workers by direct, secret and universal suffrage, participates in the consultation, liquidation and distribution, in an assembly convened by the trade union that has the most members in the enterprise. e) Objections against the distribution board are heard by the Single-Member Court of First Instance during the interim measures procedure. f) Existing rights for periodic or one-off employee benefits, including employees whose employment relationship was terminated at the time of the business transfer (survivor benefits) are not affected, and are taken into account during the distribution process of c), d), and e) as above.

By virtue of art. 351 of Presidential Decree 80/2022:

- the transfer of a business, establishment, or part of a business or establishment does not in itself constitute a reason for the employees' dismissal. Provision of previous paragraph does not prevent, subject to the relevant provisions on layoffs, these dismissals that may occur for economic, technical or organizational reasons that entail changes in the workforce.
- if the employment contract or the employment relationship is terminated due to the fact that the transfer involves a substantial change in the working conditions to the detriment of the employee, the termination of the employment contract or of the employment relationship is considered to have been caused by the employer.

Articles 350 and 351 do not apply to the transfer of an undertaking, establishment or part of an undertaking or establishment, when the transferor is in bankruptcy proceedings, or in any other similar insolvency proceedings.

Any intention, by the transferor or the successor, to take measures towards changing the employees' status is subject to timely consultations with employees' representatives who are informed on: the date and the reason (s) of the transfer; the legal, economic, and social consequences for employees, and the measures envisaged with regard to them. In the absence of employee representatives for reasons beyond the employees' control, the employer provides the above mentioned information in writing and in advance to all employees.

As employees representatives, eligible to participate in consultation procedures, are those of the Union with a membership of at least 70% of the employees, and a majority of the dismissed employees.

Since many regional offices of the labour inspectorate's employment relations inspectorate have received reports or complaints concerning the circumvention of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, as defined by Presidential Decree 178/2002, to provide a uniform way of dealing with this issue the labour inspectorate issued an explanatory circular ([Circular: 58455/2017](#)), according to which the transfer of an undertaking means the transfer of an entity retaining its identity, which is understood to mean a set of organised resources aimed at pursuing an economic activity, either primary or secondary.

The different title, form or transformation of the legal entity occurring upon the dissolution of the transferor and the constitution of the successor have no influence. The same applies even if the new employer (the successor) uses new offices, new premises and equipment, and when it has been agreed with the employee representatives that the contracts of the personnel which, either in whole or in part, has been placed in the same positions shall continue in force. Thus, there is no need for a legal link between the transferor and the successor. The retention of the unit's identity is mainly determined by elements such as the similarity of the pre- and post-transfer activities; the transfer or not of goodwill and clientele; the transfer of part or all of the tangible or intangible assets of the former undertaking to the successor at the time of the transfer, and so on.

In the case of the transfer of an undertaking under PD 178/2002, the successor employer automatically assumes the obligations of the former (transferring) employer arising from the active contracts vis-à-vis the employees of the undertaking, given that such obligations are regarded as an integral part of the undertaking and are also borne by the new employer. It should be emphasised that, even after the transfer, the transferring employer is jointly and severally liable with the successor for the obligations arising out of the employment contract or relationship up to the time when the successor takes over. Furthermore, under article 8 of the Presidential Decree, both the transferor and the successor employer are required to inform the representatives of their employees who are affected by the transfer about certain critical points relating to the individual terms and conditions of the transfer. In the absence of employee representatives, for reasons beyond their control, the employer is obliged to inform all employees in writing, in a timely manner, at the same time, and in advance.

The provisions of Presidential Decree 178/2002 are mandatory rules, applying regardless of the will of the parties involved. Consequently, any agreement between an employer and an employee on the non-application of such protective provisions, and an agreement with another object, which leads to or has the same effect, are null and void. Therefore, even if they both consent, they cannot decide that, upon the transfer of the undertaking, the obligations and rights deriving from the contracts of the former employer will not be assumed by the successor, and thus the employees will be deprived of the protection and

their acquired rights in general.

The Greek law applies to every contractual or mandatory business transfer, merger, takeover or acquisition of a company or of its business facilities or any part from one employer to another. While the law applies to transfers from the private to the public sector, article 2.1 of Presidential Decree 178/2002 stipulates that the law does not cover 'the administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities'.

A unit which retains its identity is defined as 'the sum of organised resources whose purpose is the exercise of either primary or secondary activities' (please note that some legal uncertainty exists regarding the definition of an economic entity and when it is considered to be continuing its primary or secondary economic activities). The law protects all of the transferors' employees with a legal employment contract in force at the date of the transfer. This covers:

- employment contracts or employment relationships regardless of the number of hours worked or to be worked;
- employment relationships governed by a fixed-term contract of employment, in accordance with the provisions laid down in article 1(1) of Directive 91/383/EEC;
- temporary employment relationships in accordance with the provisions laid down in article 1(2) of Directive 91/383/EEC.

The employee's consent is not a prerequisite for a transfer, and employees are obliged to offer their services to the transferee. If employees object to the transfer, they are entitled to terminate their contracts with appropriate notice.

The transferee is permitted to refuse to continue an insurance agreement (including pension agreements) if the costs would substantially impede the transfer. All other rights agreed upon by the previous employer, including those made through collective agreement or company by-laws, must remain unchanged. Specifically, this includes:

- the total salary and how it is apportioned;
- the duties and tasks performed by the employee;
- institutional issues such as annual leave, working time, recognition of previous employment, and so on;
- the terms of the employment contract.

Moreover, the time spent while employed by the transferor should be regarded as continuous employment for the purpose of calculating salary, benefits, redundancies compensation, etc. Conditions which have been agreed by collective agreement may be

renegotiated by the transferee and employees after the transfer, however until an appropriate replacement is agreed upon the previous conditions apply.

There is no specific timeline regulating when employees may be dismissed following a transfer, however, it is stipulated that the transfer must not be the sole reason for such dismissal. Under the labour law, there is no obligation on the employer to explain the reasoning behind dismissal, therefore the onus is on the employee to prove that their dismissal was in direct relation to the transfer. If it is found that the transferee has unlawfully disregarded the prohibition of dismissal in regard to a transfer, the dismissals will be regarded as unlawful and the transferee will be liable for reemployment and wages paid for the period that the employees did not work.

Commentary

The Presidential Decree provides for the (first time) codification of the legislation governing individual labour law. According to experts, the codification does not bring about any modification, addition or repeal of provisions, but brings together the existing provisions as they apply, with logical and thematic continuity in order to facilitate the search of the existing institutional framework.

There are many judicial decisions on the implementation of Presidential Decree 178/2002. Under settled case law, if the identity of the business and its economic activity are retained, a change of employer, regardless of the legal issue and the form of the transfer, involves automatic substitution of the new employer in the existing employment relationships and the exemption of the previous employer, with the result that the consent of the employees is not required. An employer who succeeds or substitutes the original employer in any way and any legal form in a business assumes the obligations of the original employer regarding the staff of the business. For these consequences to occur, it is necessary (and sufficient) for the business to actually continue its operation as an economic unit without interruption regardless of whether the change of operator of the business is combined with a change of title, legal form or other changes.

Additional metadata

Cost covered by Employer

Involved actors other than national government National government Court Works council Trade union

Involvement (others) First Court of Instance

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

Sources

- [PD 178/2002](#)~~~ [Circular: 58455/2017](#)~~~ [Presidential Decree 80/2022](#)~~~ [Law 5053/2023](#)~~~ [Global Legal Insights, Employment & Labour Laws and Regulations 2023 -Greece](#)~~~

Citation

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