

Hungary

Employment protection in relation to business transfers

Phase	Act I of 2012 on the Labour Code; Act V of 2013 on the Civil Code; Act CLXXVI of 2013 on the Transformation, Merger and Demerger of Legal Entities (Transformation Act)
Native name	2012. évi I. törvény a Munka Törvénykönyvéről; 2013. évi V. törvény a Polgári Törvénykönyvről; 2013. évi CLXXVI. törvény az egyes jogi személyek átalakulásáról, egyesüléséről, szétválásáról
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

Article 36-40 and 264(1) and (2) of the Labour Code; Article 3:39-3:47 of the Civil Code; Article 14,18 of Transformation Act

Description

Under Hungarian law, a transfer of undertakings occurs if:

- a legal succession takes place by operation of law ('universal succession'); or
- an independent unit (such as a strategic business unit, plant, shop, division, workplace, or any part of these) or the tangible or intangible assets of the employer are transferred by agreement to an organisation or person ('business transfer').

The universal succession is regulated by Chapter 13 of Act 5/2013 on the Civil Code. For a universal succession, the change is automatic and employment contracts are taken over by the new entity with a continuation of the provisions of the contract. Examples of such are transformations, mergers, demergers and 100% changes of ownership.

As of January 2022, under Article 3:43 of Act 5/2013 on the Civil Code, the transferor must publish two statements, instead of the earlier one, following the approval of the transformation plan. If the transferor has any debt outstanding to creditors prior to the publication of the first notice, the creditor may require guarantees for their payment within 30 days of the publication of the second notice, if the transformation should endanger that debt obligations are met.

Individual transfers, or the transfer of partial assets of the company, by contrast, require an agreement between the transferor and the transferee. Act I of 2012 on the Labor Code (Mt.), Articles 36-40, contains provisions under the heading 'Changes in the person of the employer', regulating legal succession based on an agreement.

As of January 2023, under Article 38 (1), the new employer must provide notification in writing to the employee of the transfer and the identity of the new employer as well as any change in the conditions of work.

According to the Council Directive 2001/23/EC, this refers to 'a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary'. This directive has been implemented in the Hungarian law.

Although public sector jobs are not explicitly exempted, other more specific rules may apply in these cases as they are regulated by conditions other than the labour code.

All employees whose employment relationship is in force at the time of the transfer including 'inactive' employees (those on sick or maternity leave at the time of the transfer) are covered by the regulation.

On organisational changes in sole proprietorships, Act CXV of 2009 on the sole proprietor and the sole proprietorship applies. If the sole proprietor operates as a sole proprietorship, this law applies to them, and the sole proprietorship may be transformed into a company by applying the provisions of the Civil Code.

Employment contracts (both permanent and fixed-term contracts) in force at the time of the transfer must remain unchanged when taken up by the transferee. After the transfer, transferees are allowed to make suggestions in regard to changes to individual contracts, particularly in regard to changes of workplace or position. However, the employee is entitled to refuse such suggestions and the employer may not terminate their contract as a result.

Employees are not at liberty to refuse the transfer as a whole, but they can ask to be 'relieved from work duty', which effectively means they are initiating the termination of the

employment. Such can be seen as a ground for dismissal.

Employees' benefits must also remain unchanged for a period of at least one year after the transfer has occurred. Mandatory personal pension contributions and private pension benefits will automatically transfer, meaning that time spent in employment with the transferor must be counted as continuing employment by the transferee.

In terms of liabilities, the general rule is that all rights and obligations arising from employment relationships will be transferred to the transferee at the time of transfer. However, both parties are jointly liable for claims arising prior to transfer, provided they were made within one year.

Employers are also not allowed to dismiss an employee as a direct consequence of the transfer.

Commentary

An important rule has been in force in the Labour Code since 2012, which, following the German example, allows the employee to terminate the employment relationship if a change in the identity of the employer has significantly and adversely changed their working conditions and would result in disproportionate harm or an impossibility of maintaining employment.

The termination must be filed within 30 days, in writing and with reasons. In this case, the employee is entitled to as much notice and severance pay as they would have received if the employment had been terminated by the employer. The works council may exercise the right to comment on the employer's decisions concerning the reorganisation, transformation, transformation of an organisational unit into an independent organisation, in such a way that at least 15 days prior to an employer decision the employer asks the work council to comment on the measure affecting a larger group of employees (Labour Code, Article 264 (1) and (2) (a)).

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Employer organisation Works council

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

- Forgó, Z., & Forgó Füzi, Z. (2015). Private acquisitions in Hungary: overview.~~~ [Act V of 2013 on Civil Code](#)~~~ [Act I of 2012 on Labour Code](#)~~~ [Transformation Act](#)~~~

Citation

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