

Norway

Employment protection in relation to business transfers

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
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Article

16-1 to 16-7

Description

The definition of the term 'undertaking' (or part thereof) is in line with that of the European Court of Justice (ECJ). This means that in order for Norwegian legislation to apply, the unit being transferred must be independent from an economic and organisational point of view. This implies an organised group of people and assets which enable the unit to be involved in economic activities. Moreover, Norwegian law uses the seven indicators as defined by the ECJ to decide whether a transfer of undertaking has occurred. These are:

- whether tangible assets have been transferred,
- the type of business or undertaking concerned,
- the value of intangible assets at the time of the transfer,
- whether the majority of employees are retained,
- whether customers are transferred,
- the similarity between the activities,
- the duration of any interruption in the performance of the activities.

These rules do not apply in cases of the purchase of insolvent enterprises or if a change in stocks or shares equate to a technical change in ownership.

All employees (both those on permanent and fixed-term contracts, including those inactive through sickness or maternity leave) are covered by the legislation. However, the employment relationship must be fixed, and therefore consultants and subcontractors are not covered. The existence of an employment relationship is settled in accordance with §1-8 of the Working Environment Act, which states that a person who performs work in the service of another is an employee and thereby covered by the act. Further criteria are developed through case law and suggest that the person must be in a subordinate position, or otherwise owe a personal obligation to work. In cases where only a section or part of an enterprise will be transferred, those employees who are necessary to keep the transferring business operational will transfer.

Employees are entitled to invoke their 'right of reservation' and object to the transfer, however they must do so in writing within a time limit set by the employer. The time limit cannot be shorter than 14 days after the employer has informed their employees of the transfer. In some cases, if the transfer leads to 'not insignificant' negative changes for the employee, he/she may also choose to stay with the former employer. Invoking this right will, however, imply a risk of being redundant if there are no positions available. If an employee has worked a total of at least 12 months during the two years prior to the transfer, he/she has a preferential right to a new appointment with the transferor should such a position become available within one year of the transfer.

All rights and obligations involved in the employment agreement between the transferor and transferee must be upheld after the transfer. This includes benefits and pension rights.

Collective agreements are also transferred. If the company wishes to change such rights it must inform the unions no later than three weeks after the transfer. If the collective agreement is not transferred, the employees have the right to retain their individual rights following from the collective agreement until the agreement expires or another collective agreement is concluded.

All other changes to individual employment contracts, including potential dismissal, must not be made in connection with the transfer. If such changes can be proved to be in direct relation to such, the changes and/or dismissal will be considered invalid and the employer will be liable for damages owed as well as renewal of any contracts which were illegally dismissed.

Commentary

In order to decide whether a transfer is covered by these regulations, European Court of Justice (ECJ) case law will be of great importance. However, it is worth noting that case law

to a certain degree gives the employees stronger protection than stated in the EU legislation, as the employee in certain situation may have the right to stay with the former employer.

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

- Ius Laboris (2009), Transfers of Undertakings Guide~~~ [Working Environment Act](#)~~~
[Arbeidsmiljøloven](#)~~~

Citation

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