

Poland

Employment protection in relation to business transfers

Phase	Act of 26.06.1974 -Labour Code; Act of 23.05.1991 on Trade Unions; Act of 5 July 2018 on the succession management of a natural person enterprise
Native name	Ustawa z 26.06.1974 -Kodeks Pracy; Ustawa z dnia 23.05.1991 o związkach zawodowych; Ustawa z dnia 5 lipca 2018 r. o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej
Type	Employment protection in relation to business transfers
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Article

Article 23(1) of the Labour Code; Article 26(1) of the Act on Trade Unions; Article 31 of the Act on the succession management of a natural person enterprise

Description

There is no formal definition of a transfer, however, it has been developed by case law and the understanding is that a transfer occurs when, as a result of certain legal actions, tasks and/or assets are taken over by another entity. An undertaking (or part thereof) is understood as a place of work for the employee. When ownership has changed by a sale of shares alone, this will not be considered a transfer, according to the law.

The law protects all persons considered 'employees' without difference between those on permanent contracts and fixed-term contracts, including those inactive due to maternity or sick leave. However, those persons who work for a company de facto but are employed by another entity are not covered (e.g. temporary workers, seconded staff etc.).

As a result of the transfer, the transferee becomes, by operation of law, a party to the employment contracts made between the transferor and employee. Moreover, the

transferee must also agree to all obligations agreed to in collective agreements (for a period of one year), and agreements regarding employee benefits. Although there has yet to be a case to establish formal precedence, it is understood that pension obligations are also transferred.

The transferee also becomes responsible for all liabilities concerning employment, or in the case of partial transfers, for the liabilities arising from the staff which were involved in the transfer. In both cases, however, the transferor remains jointly liable for obligations which arose prior to the transfer.

If the transferee wishes to make amendments to individual or collective employment contracts, they must initiate the 'notice of alteration of terms of employment' as regulated in law. However, in no circumstances can the transfer alone be sufficient reason to change the terms outlined in the contracts.

The situation of employees in an enterprise owned by an entrepreneur - a natural person - after the death of the owner can be considered as a specific kind of business transfer. In the past, the death of the owner led to automatic termination of the enterprise, including expiration of contract with all employees. Under the new legislation (the act came into force on 25 November 2018), it is possible for the enterprise to continue its existence, for example by introduction of temporary transition-period management. Also the rights of the spouse and/or heirs of the deceased entrepreneur are strengthened. The new act allows to use the legal company name with the addition of 'inheritance' by heirs of the owner from the day of opening the legacy to the day of division of legacy. As a result, this indirectly improves the situation of workers as regards possibility to continue working.

Commentary

Since 1 March 2017, a new technical identicode '800' (to be sent by the employer to the Social Insurance Institution - ZUS) has been introduced which should be used when an employer decides to terminate a worker's social security due to a transfer. This will allow the Social Insurance Institution to be aware of the transfer, to monitor the movement of workers and to keep up with the regularity of payers' duties. It is too early to assess the effectiveness of introducing this identicode in light of employees' rights.

Additional metadata

Cost covered by None

Involved actors other than national government	Other
Involvement (others)	Social Insurance Institution (ZUS)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

- [Labour Code \(in Polish\)](#)~~~ [Trade Unions Act \(in Polish\)](#)~~~ [A lus Laboris Publication \(2009\) 'Transfers of Undertakings Guide'](#)~~~ [Ustawa z dnia 5 lipca 2018 r. o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej](#)~~~

Citation

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