

Sweden

Employment protection in relation to business transfers

Phase	Employment protection act (1982:80); Co-determination act (1976:580)
Native name	Lag (1982:80) om anställningsskydd; Lag (1976:580) om medbestämmande i arbetslivet
Type	Employment protection in relation to business transfers
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Article

6b in the Employment protection act; 28 in the Co-determination act

Description

When transferring a business, the rights and obligations stipulated in the employment contract applicable at the time of transition are also transferred to the new employer. The rules apply in case of:

- a transfer of an economic entity or part of an economic entity which retains its identity (e.g. the sale of a business), or
- a 'service provision change' (such as contracting activities out, bringing them in-house, or a change of contractors).

Swedish law uses the seven indicators identified by the European Court of Justice to determine when a retention of identity has taken place. These are:

- whether the majority of the employees have been maintained (employees are defined as all workers who have some form of employment contract with an employer, regardless of whether it is a public-sector or a private-sector employer),
- the type of business or undertaking concerned,

- the similarity between the activities (retention of identity),
- whether customs are transferred,
- the duration of any interruption in the performance of the activities,
- whether tangible assets have been transferred, and
- whether intangible assets have been transferred.

Sweden expands the commonplace understanding to include public bodies and government services.

In terms of service provision change, the legislation applies if, before the change, there is an organised grouping of employees with the purpose of carrying on the activities. A single employee may constitute such a grouping. Activities not normally included are 'one-off' buying-in of services, a contract for short-term services, and activities mainly related to the supply of goods to the business.

The legislation protects all employees (including those on temporary contracts) employed by the undertaking that is being transferred. The rights and obligations provided for in their employment contracts are also transferred. This includes accrued benefits but not pension rights, unless agreed upon by a collective agreement. The basic rule is that no detrimental changes may be made to the position of the employee. However, minor changes to individual contracts may be made, given the consent of the employee.

An employee has the right to object to a transfer and must then inform the transferor in writing. If the employee objects, he or she will remain in contractual agreement with the transferor. If the transferor can no longer provide the employee with employment, then the transferor must initiate dismissal measures as standard.

If the transferor is bound by a collective agreement and the transferee is not, the terms of such agreement will be applicable for the whole of the transferee's enterprise. However, if the transferee is already subject to a collective agreement, then it is this agreement that will apply to the employees, subject to a probationary period of one year or until its expiry.

Commentary

Collective agreements are also transferred to the new employer, unless the employer is already bound by a collective agreement.

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

- A lus Laboris Publication (2009), 'Transfers of undertakings guide'~~~ [Lag \(1982:80\) om anställningsskydd](#)~~~ [Lag \(1976:580\) om medbestämmande i arbetslivet](#)~~~

Citation

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