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Poland: Staff information and consultation on business transfers

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Poland

Phase:

Anticipation

Type: **Staff information and consultation on business transfers**

Last modified: 25 October, 2017

Native name:	Ustawa z dnia 26.06.1974 r. - Kodeks pracy; Ustawa z dnia 23.05.1991 o związkach zawodowych; Ustawa z dnia 23.04.1964 r. -Kodeks cywilny
English name:	Act of 26.06.1974 - Labour Code; Act of 23.05.1991 on trade unions; Act of 23.04.1964 - Civil Code

Article

Article 23 (1), Article 300 of the Act of 26.06.1974 - Labour Code; Article 26 (1) of the Act of 23.05.1991 on trade unions; Article 471 of the Act of 23.04.1964 - Civil Code

Description

Employees must be informed 30 days in advance about a business transfer. Such transfer can be a result of sale, leasing, hiring, tenancy or any other commercial contract. Information must be provided by the former and the new employer.

The information about business transfer should be provided to employees in writing and must include the expected date of the business transfer, the reason of the transfer, the legal, economic and social consequences of the transfer for the employees, the intentions concerning the employment conditions of employees (their employment contracts are not subject to change due to the transfer) and, in particular, remuneration and training conditions. The information can include explanations about the specific measures to alleviate some negative consequences but this is not obligatory.

A written notification should be also provided to trade unions and should include the same information as mentioned above.

If the negotiations with trade unions result in an agreement concerning the transfer of undertaking it is treated as an autonomous source of labour law according to Article 9 of the Labour Code - verdict of Supreme Court (SN 2009 02 25 II PK 184/08). This means that an individual employee can submit a claim to the labour court based on such agreement.

Comments

Section 3 of article 23 (1) of the Labour Code does not lay down sanctions for infringement of this provision.

In the event of non-compliance or improper compliance of the information obligation imposed on the employer, in order to enforce labour rights, appropriate civil liability provisions should be used, namely article 471 of the Civil Code in connection with article 300 of the Labour Code.

According to the general principles of burden of proof-sharing, the burden of proof that employees have suffered detriment as a result of lack of relevant information lies with him/her. In other words, the only system of penalties can be found in article 35 of the Trade Unions Act. Article 35 point 4 indicates that any person who in connection with their position or function held fails to perform obligations specified in article 26 (1), (33 (1) and 34 (1) shall be liable to a fine or freedom restriction. It means that there is no specific system of sanction which is connected with non-compliance with employer transfer obligations.

Literature (Twardoch-Medrek, 2011) points out that because of this, one can doubt the full, correct implementation of the Directive (Directive Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses).

The Supreme Court (SN) points out in its ruling of 15 September 2006 (I PK 75/06) that the current employer's failure to consult the trade unions in the event of the transfer of a part of the establishment does not result in the the transfer being void and it does not prevent the new employer from taking over the business.

Cost covered by

Not applicable

Involved actors other than national government

Trade union
Works council

Thresholds

No, applicable in all circumstances

Sources

-  [Labour Code \(in Polish\)](#)
-  [Civic Code \(in Polish\)](#)
-  [Trade Unions Act \(in Polish\)](#)
-  DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
-  Twardoch-Mędrek, I. (2011), Transfer of work place, Przejście zakładu pracy na innego pracodawcę, Warszawa

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Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



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