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Cyprus: Employment protection in relation to business transfers

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Cyprus

Phase:

Management

Type:

Employment protection in relation to business transfers

Last modified: 09 September, 2019

Native name:

N. 104(I)/2000 - Ο περί της Διατήρησης και Διασφάλισης των Δικαιωμάτων των Εργοδοτούμένων κατά τη Μεταβίβαση Επιχειρήσεων, Εγκαταστάσεων ή Τμημάτων Επιχειρήσεων ή Εγκαταστάσεων Νόμος του 2000-2018; Ν. 24/1967 - Ο περί Τερματισμού Απασχολήσεως Νόμος του 1967-2018

English name:

Law on the Preservation and Protection of the Employee's Rights during the Transfer of Business, Facilities or Parts of Business or Facilities of 2000-2018 (Law 104(I)/2000); Termination of Employment Law of 1967-2018 (Law 24/1967) as amended

Article

Articles 3, 4, 5, 6, 7, 10 of the Law 104(I)/2000; Article 3, 18 of the Law 24/1967

Description

This law takes effect on the transfer of any legal entity both public and private exercising economic activities, regardless of profit or non-for-profit nature of these activities. A 'transfer' means the transfer of an economic entity which retains its identity, and which can be seen as a group of organised resources and which has the objective of pursuing an economic activity, whether or not that activity is primary or secondary (article 3).

The provisions of the law do not apply to transfers involving insolvent businesses (article 6), or the reorganisation or re-distribution of functions amongst public bodies (article 3.3). An exclusion of employees of sea vessels has been lifted with the last amendment of the law in 2018. Now crew sea vessels are equally covered, provided the headquarters of the transferor or of the transferred business, facility or the transferred part of the business or facility remain with the territorial reach of the Treaty on the functioning of the European Union (article 3.4).

The legislation applies to all employees with indefinite contracts or apprentices (article 2). Moreover, the employment contract must remain unchanged except in cases where changes have been expressly agreed upon. These changes may not result in the worsening of conditions for the employee. Employees must be granted all rights to which they were previously entitled regarding employee benefits including old age and disability, and any rights to supplementary occupational retirement benefits. Pension entitlements also must remain unaffected and occupational pension rights are protected by social security legislation and pension trusts (article 4).

In terms of liabilities, the transferee is generally liable for all claims made by transferring employees whether made before or after the transfer. However, the two parties (transferor and transferee) may agree to joint liability to employment related claims in connection with the transfer (article 4.1).

The transfer cannot constitute reason for dismissals (article 5.1). However, dismissals may be justified, if they have been conducted due to economic, technical and organisational reasons and in line with article 18 of the Termination of Employment Law. In this case, redundant employees have the right to compensation from the Redundancy Fund. If the transferor or the transferee terminate the employment relationship of an employee, independently of economic, technical or organisational reasons, the dismissal is considered as illegal and the employee is entitled to compensations payable by the employer and calculated on the basis of length of service, applicable terms of employment prior the transfer and in line with any other respective provisions of article 3 of the Termination of Employment Law.

Comments

According to the Labour Relations Department, a small number of complaints are addressed by trade unions in relation to the legislation, 2-3 cases per year. The department provides in this regard counselling and information. To effectively pursue their rights, complaining employees need to resort to a court by lodging a civil case against their employer.

Trade unions consider some provisions of the legislation as obscure, especially in relation with the question when a restructuring qualifies as business transfer. As a result of this, some employees remain unprotected. They also expressed doubts over the proper implementation of

the legislation as regards the protection of employee's rights in business transfers occurring in non-organised enterprises.

Cost covered by

Not applicable

Involved actors other than national government

Trade union

Thresholds

No, applicable in all circumstances

Sources

- 📖 Ο περί της Διατήρησης και Διασφάλισης των Δικαιωμάτων των Εργοδοτούμενων κατά τη Μεταβίβαση Επιχειρήσεων, Εγκαταστάσεων ή Τμημάτων Επιχειρήσεων ή Εγκαταστάσεων, Νόμος του 2000 (Ν. 104(Ι)/2000)
- 📖 Ministry of Labour, Welfare and Social Insurance / Department of Labour Relations
- 📖 Ο περί Τερματισμού Απασχολήσεως Νόμου του 1967 (24/1967)
- 📖 Ministry of Labour, Welfare and Social Insurance / Social Insurance Services

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