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Malta: Employment protection in relation to business transfers

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Malta

Phase:

Management

Type: [Employment protection in relation to business transfers](#)

Last modified: 27 September, 2019

Native name:

Att dwar L-Impiegi u r-Relazzjonijiet Industrijali (Kap 452 tal-Ligijiet ta' Malta); Regolamenti dwar l-Harsien tal-Impiegi fit-Trasferiment Avviz Legali 433 tal-2002, kif emendat bl-Avvizi Legali 427 tal-2007, 195 tal-2010, 129 u 443 u 467 tal-2011, 363 tal-2012, 483 tal-2014, u 285 tal-2017

English name:

Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta); Transfer of Business (Protection of Employment) Regulations Legal Notice 433 of 2002 amended by L.N. 427 of 2007; L.N. 195 of 2010; L.N. 129 of 2011; L.N. 443 and 443 of 2011; L.N. 363 of 2012; L.N. 483 of 2014; L.N. 285 of 2017

Article

Article 38 of the Employment and Industrial Relations Act; Transfer of Business (Protection of Employment) Regulations, Legal Notice 433 of 2002 as amended by Legal Notices 427 of 2007, 195 of 2010, 129 and 443 of 2011, 363 and 467 of 2012, 483 of 2014, and 285 of 2017 - whole regulation

Description

Article 38 of the Employment and Industrial Relations Act stipulates that the transferor and the transferee shall inform the employee representatives of their respective employees affected by the transfer with:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and
- the measures envisaged in relation to the employees.

In the Transfer of Business (Protection of Employment) Regulations, the term 'transfer' is defined as a transfer of an undertaking which retains its identity as an organised group of resources but includes a change in service provision. Outsourcing of activities, insourcing of activities as well as a change in the contractor who carries out the previously outsourced activities of the business constitute a change in service provision.

Legal Notice 433 of 2002 as amended defines the the transferee as the the natural or legal person which becomes the employer in the event of a transfer, while the transferor refers to any natural or legal person which ceases to be the employer in the event of a transfer. Thus, the undertaking is transferred from the transferor to the transferee in the event of a transfer.

After a transfer, the contract of employment of each person employed by the transferor shall have effect as if originally made between the person so employed and the transferee. On the completion of a transfer, all the transferor's rights powers, obligations and liabilities under or in connection with any contract of employment shall be transferred to the transferee.

The Regulation (Legal Notice 433 of 2002) provides protection for the employees transferred by stipulating that the transferor shall effect payment and settle any dues owed to the employees affected by the transfer in relation to the employment relationship with the transferor in respect of any wages, pro rata bonuses and weekly allowances due up to the end of the relationship with the transferor, by the next pay date falling immediately after the transfer of the undertaking or part of the undertaking which would have been the next pay date had the employees concerned been still in an employment relationship with the transferor.

Legal Notice 433 of 2002 states that article 38 of the Employment and Industrial Relations Act applies to both partial and whole business transfers, providing that the economic entity being transferred retains its identity, with the objective of pursuing an economic activity.

However, article 38 only applies to businesses that employ more than 20 employees. Both full-time and part-time employees are factored in. The Employment and Industrial Relations Act defines an employee as 'any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person

when such work or service is not regulated by a specific contract of service'.

As stated in Legal Notice 433, the transfer of the business, whether partial or whole, does not constitute sufficient grounds for either the transferor or the transferee to make employees redundant. According to article 38 of the Employment and Industrial Relations Act, in the event of a business transfer, a previously agreed upon collective agreement still remains valid and in force until its expiry or until a new collective agreement is made with the transferee. Thereby, the terms and conditions set out in the collective agreement concerning the employment relationship still apply after the transfer. This does not apply, however, if the transferor is in a state of insolvency.

According to Legal Notice 433, after the transfer, employment contracts made between the previous employer, the transferor, and the employees shall be upheld in their original form with the new employer, the transferee. The Legal Notice does not distinguish between permanent and fixed-term contracts. When the transfer is completed, the transferor's rights, powers, obligations and liabilities related to any employment contract are passed on to the transferee. In addition, the transferee is obliged to re-employ employees that were made redundant prior to the transfer, if their previous posts become available within one year from the notice of redundancy. This applies if them still being employed at the time of the transfer would have led to them being transferred into the employment of the transferee. In such cases, the re-employment should be enacted with the same conditions of employment that the employees enjoyed in their previous posts.

Comments

Legal Notice 273 of 2018 which was published on 14 August 2018 has not as yet entered into effect because it was suspended by the Prime Minister given the uproar made by employers. This legal notice together with another three were not put forward to the Employment Relations Board for discussion as per law but were published without any consultation whatsoever. Discussions on amendments to Legal Notice 273 of 2018 are still ongoing at the Employment Relations Board as of 9 August 2019.

Cost covered by

Not applicable

Involved actors other than national government

National government only

Thresholds

Company size by number of employees:

21

Number of affected employees:

21

Sources

-  [Chapter 452 of the Laws of Malta, Employment and Industrial Relations Act](#)
-  [Subsidiary legislation 452.85, Transfer of Business \(Protection of Employment\) Regulations, Legal Notice 433 of 2002](#)
-  [National Labour Law Profile: Malta](#)

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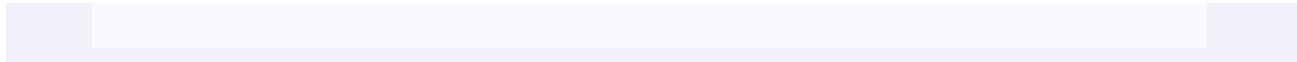
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- > [Restructuring case studies](#)
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- Environmental policy
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Contact us

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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