



# EMCC

European Monitoring Centre on Change

## Slovenia: Employment protection in relation to business transfers

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Phase:

Management

Type:

Employment protection in relation to business transfers

Last modified: 26 May, 2019

Native name:

Zakon o delovnih razmerjih (ZDR-1)

English name:

Employment Relationship Act (ZDR-1)

### Article

75 and 76

### Description

In the event of a business transfer the rights and obligations arising from the employment contracts (both permanent and fixed-term contracts) with the transferor employer will be transferred to the new employer (transferee employer), whether the business transfers concerns a part of a company or a whole company. A business transfer is a 'legal transfer of an undertaking or part of an undertaking carried out on the basis of an act, another regulation, a legal transaction and/or a final court decision, or due to a merger or division' (ZDR-1, article 75, paragraph 1).

The collective agreement established prior to the business transfer will continue to apply for at least one year after the transfer, unless the collective agreement is set to expire before that, or if a new collective agreement is drawn up before the one-year mark.

An employee is defined as 'any natural person who has entered into an employment relationship on the basis of a concluded contract of employment' (ZDR-1, article 5). If the rights of the employees are weakened, or if the working conditions are significantly altered within two years of the transfer and the employee for this reason chooses to terminate the employment relationship, the employee is entitled to the same rights as if the employer had dismissed the employee for business reasons. This includes the notice period, the right to severance pay and other rights associated with seniority of the position. In this case the years of service with the transferor employer and the transferee employer have to be taken into account and the transferor employer and the transferee employer are jointly liable for claims of these employees.

The majority owner of the transferor employer (holding more than a 25% share of the company's capital or at least 25% of voting rights) is jointly liable for claims of workers in the event of bankruptcy or compulsory winding-up of the transferee if this is initiated within two years after the transfer. The transferor employer's liability correlates with the years of service of a particular worker with the transferor employer. Other non-majority owners are subsidiarily liable for the claims of the transferred workers.

If an employee refuses to be transferred to the transferee employer, the transferor employer may extraordinarily cancel the employment contract. In this case the employee has no right to a notice period, severance pay, and unemployment benefits.

The transferor employer and the transferee employer are obliged to inform the trade union (or all workers if there is no company trade union) at the employer at least 30 days prior to a transfer of the following:

- the date or the proposed date of the transfer,
- the reasons for the transfer,
- the legal, economic and social implications of the transfer for workers, and
- the measures envisaged for workers.

The both have to consult the trade union about the third and fourth issue with the intention of achieving an agreement.

### Comments

According to the Parliamentary Committee, the ability to change of employer turned out to be a tool for various misuses: workers were transferred from the primary company to a so called 'letterbox company' without assets with the purpose of evading employer's liabilities towards employees. After the completion of the transfer, the letterbox company went bankrupt and workers were left without wages and severance pay because the company had no assets they could sell that would enable them to pay off the claims of the employees. Transferred workers were often old and/or disabled workers with large claims due to their seniority status. Trade unions and media

significantly contributed to raising public awareness on this issue. The extension of rights of transferred employees (the right to terminate the employment contract if working conditions were significantly altered within the period of two years) and the joint liability of the transferor employer and the transferee employer in 2013 successfully terminated such practices.

#### Cost covered by

Not applicable

#### Involved actors other than national government

Trade union

Other


#### Involvement others

Transferor employer, transferee employer


#### Thresholds

No, applicable in all circumstances

#### Sources

 Zakon o delovnih razmerjih (ZDR-1) (SL)

 Employment Relationship Act (ZDR-1) (EN)

 Parliamentary Committee for Labour, Family, Social Affairs and Disabled Persons, 'Layoffs through so called letterbox companies', 8 July 2010

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