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Norway: Staff information and consultation on business transfers

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Norway

Phase:

Anticipation

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

Last modified: 10 February, 2021

Native name: **Arbeidsmiljøloven**

English name: **Working Environment Act**

Article

16-5

Description

The definition of the term 'undertaking' (or part thereof) is defined in line with that of the European Court of Justice (ECJ). This means that in order for Norwegian legislation to apply, the unit being transferred must be an independent economic unit. The basic requirements are a minimum of organisational independence, while being comprised of an organised group of people and assets which enable the unit to be involved in economic activities. Moreover, Norwegian law uses the seven indicators as defined by the ECJ to decide whether a transfer of undertaking has occurred. These are:

- whether tangible assets have been transferred,
- the type of business or undertaking concerned,
- the value of intangible assets at the time of the transfer,
- whether the majority of employees are retained,
- whether customers are transferred,
- the similarity between the activities,
- the duration of any interruption in the performance of the activities.

These rules do not apply in cases of the purchase of insolvent enterprises or if a change in stocks or shares equate to a technical change in ownership.

The regulation lays down an obligation for the former and new employer to provide information concerning the transfer and discuss it with the employees' elected representatives. If this obligation is not met, the employer may see a sanction. The act does not specify whom to consult if there is no elected representatives, but most companies will have one as they are obliged to elect a safety deputy in all companies with at least 10 employees. This shall be done as early as possible. The information shall cover:

- the reason for the transfer,
- the agreed or proposed date for the transfer,
- the legal, economic and social implications of the transfer for the employees,
- changes in circumstances relating to collective agreements,
- measures planned in relation to the employees,
- rights of reservation, that is to stay with the former employer. This will, however, imply a risk of being redundant.

If the previous or new owner is planning measures (not further specified in the act) in relation to their respective employees, they shall consult with the elected representatives as early as possible on the measures with a view to reaching agreement.

Comments

The purpose of the regulation is partly to give employees access to information about what is going to happen, and what kind of consequences this will have for them, and partly to give the elected representatives a possibility to influence the decisions that are taken. The representative shall be informed before the employees in order to be able to influence the decision.

Cost covered by

Not applicable

Involved actors other than national government

Trade union

Thresholds

No, applicable in all circumstances

Sources

 [Working Environment Act](#)

 [Arbeidsmiljøloven § 16-5](#)

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