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## Greece: Employment protection in relation to business transfers

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Greece

Phase:

Management

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

Last modified: 07 November, 2019

Native name:

**Εγκύκλιος: 58455/ 2017: Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων η επιχειρήσεων, Σώμα Επιθεώρησης Εργασίας, 15 Μαρτίου 2017; Προεδρικό Διάταγμα 178/2002 Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων ή επιχειρήσεων, σε συμμόρφωση προς την Οδηγία 98/50/EK του Συμβουλίου**

English name:

**Circular: 58455/2017: Measures concerning the protection of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, labour inspectorate, 15 March 2017; Presidential Decree 178/2002 Measures relating to the protection of workers' rights in the event of transfers of undertakings, establishments or parts of businesses or businesses, in conformity with Council Directive 98/50/EC**

### Article

Circular: 58455/2017, whole (explanatory circular); Presidential Decree 178/2002 articles 1-12

### Description

Since many regional offices of the labour inspectorate's employment relations inspectorate have received reports or complaints concerning the circumvention of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, as defined by Presidential Decree 178/2002, to provide a uniform way of dealing with this issue the labour inspectorate issued an explanatory circular ([Circular: 58455/2017](#)), according to which the transfer of an undertaking means the transfer of an entity retaining its identity, which is understood to mean a set of organised resources aimed at pursuing an economic activity, either primary or secondary.

The different title, form or transformation of the legal entity occurring upon the dissolution of the transferor and the constitution of the successor have no influence. The same applies even if the new employer (the successor) uses new offices, new premises and equipment, and when it has been agreed with the employee representatives that the contracts of the personnel which, either in whole or in part, has been placed in the same position shall continue in force. Thus, there is no need for a legal link between the transferor and the successor. The retention of the unit's identity is mainly determined by elements such as the similarity of the pre- and post-transfer activities; the transfer or not of goodwill and clientele; the transfer of part or all of the tangible or intangible assets of the former undertaking to the successor at the time of the transfer, and so on.

In the case of the transfer of an undertaking under PD 178/2002, the successor employer automatically assumes the obligations of the former (transferring) employer arising from the active contracts vis-à-vis the employees of the undertaking, given that such obligations are regarded as an integral part of the undertaking and are also borne by the new employer. It should be emphasised that, even after the transfer, the transferring employer is jointly and severally liable with the successor for the obligations arising out of the employment contract or relationship up to the time when the successor takes over. Furthermore, under article 8 of the Presidential Decree, both the transferor and the successor employer are required to inform the representatives of their employees who are affected by the transfer about certain critical points relating to the individual terms and conditions of the transfer. In the absence of employee representatives, for reasons beyond their control, the employer is obliged to inform all employees in writing, in a timely manner, at the same time, and in advance.

The provisions of Presidential Decree 178/2002 are mandatory rules, applying regardless of the will of the parties involved. Consequently, any agreement between an employer and an employee on the non-application of such protective provisions, and an agreement with another object, which leads to or has the same effect, are null and void. Therefore, even if they both consent, they cannot decide that, upon the transfer of the undertaking, the obligations and rights deriving from the contracts of the former employer will not be assumed by the successor, and thus the employees will be deprived of the protection and their acquired rights in general.

The Greek law applies to every contractual or mandatory business transfer, merger, takeover or acquisition of a company or of its business facilities or any part from one employer to another. While the law applies to transfers from the private to the public sector, article 2.1 of Presidential Decree 178/2002 stipulates that the law does not cover 'the administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities'.

A unit which retains its identity is defined as 'the sum of organised resources whose purpose is the exercise of either primary or secondary activities' (please note that some legal uncertainty exists regarding the definition of an economic entity and when it is considered to be continuing its primary or secondary economic activities). The law protects all of the transferors' employees with a legal employment contract in force at the date of the transfer. This covers:

- employment contracts or employment relationships regardless of the number of hours worked or to be worked;
- employment relationships governed by a fixed-term contract of employment, in accordance with the provisions laid down in article 1(1) of Directive 91/383/EEC;
- temporary employment relationships in accordance with the provisions laid down in article 1(2) of Directive 91/383/EEC.

The employee's consent is not a prerequisite for a transfer, and employees are obliged to offer their services to the transferee. If employees object to the transfer, they are entitled to terminate their contracts with appropriate notice.

The transferee is permitted to refuse to continue an insurance agreement (including pension agreements) if the costs would substantially impede the transfer. All other rights agreed upon by the previous employer, including those made through collective agreement or company by-laws, must remain unchanged. Specifically, this includes:

- the total salary and how it is apportioned;
- the duties and tasks performed by the employee;
- institutional issues such as annual leave, working time, recognition of previous employment, and so on;
- the terms of the employment contract.

Moreover, the time spent while employed by the transferor should be regarded as continuous employment for the purpose of calculating salary, benefits, redundancies compensation, etc. Conditions which have been agreed by collective agreement may be renegotiated by the transferee and employees after the transfer, however until an appropriate replacement is agreed upon the previous conditions apply.

There is no specific timeline regulating when employees may be dismissed following a transfer, however, it is stipulated that the transfer must not be the sole reason for such dismissal. Under the labour law, there is no obligation on the employer to explain the reasoning behind dismissal, therefore the onus is on the employee to prove that their dismissal was in direct relation to the transfer. If it is found that the transferee has unlawfully disregarded the prohibition of dismissal in regard to a transfer, the dismissals will be regarded as unlawful and the transferee will be liable for reemployment and wages paid for the period that the employees did not work.

## Comments

There are many judicial decisions on the implementation of Presidential Decree 178/2002. Under settled case law, if the identity of the business and its economic activity are retained, a change of employer, regardless of the legal issue and the form of the transfer, involves automatic substitution of the new employer in the existing employment relationships and the exemption of the previous employer, with the result that the consent of the employees is not required. An employer who succeeds or substitutes the original employer in any way and any legal form in a business assumes the obligations of the original employer regarding the staff of the business. For these consequences to occur, it is necessary (and sufficient) for the business to actually continue its operation as an economic unit without interruption regardless of whether the change of operator of the business is combined with a change of title, legal form or other changes.

### Cost covered by

Not applicable

### Involved actors other than national government

National government only

### Thresholds

No, applicable in all circumstances

### Sources

 [PD 178/2002](#)

 [Circular: 58455/2017](#)

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