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Portugal: Employment protection in relation to business transfers

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Portugal

Phase:

Management

Type: **Employment protection in relation to business transfers**

Last modified: 16 February, 2021

Native name:

Código do Trabalho (Transmissão de empresa ou estabelecimento), alterado pela Lei 14/2018 de 20 de março (Altera o regime jurídico aplicável à transmissão de empresa ou estabelecimento e reforça os direitos dos trabalhadores, procedendo à décima terceira alteração ao Código do Trabalho)

English name:

Labour code (transfer of undertaking) amended by Law 14/2018 of 20 March (Changes the legal regime applicable to the transfer of business or establishment and reinforces the rights of workers, making the 13th amendment to the labor code)

Article

Articles 285, 286, 287, 394, 498

Description

According to the labour code, a transfer includes any change of ownership of a company, undertaking or part of an undertaking that constitutes an economic unit. An assignment or even a re-assignment back to the transferor of the company's activities (or of the undertaking or the economic unit activities) is also considered to be a transfer.

Upon transfer, the transferee becomes the employer and all rights and obligations under the employment contract transfer to the new employer, including the responsibility for the payment of fines for breach of regulations of the labour code, as well as any obligations that have become due up to the date of the transfer.

The legal provisions related to transfers of undertakings protect employees. However, they do not apply to employees who have already been moved or are to be moved prior to the transfer date to another undertaking or part of the undertaking that is considered to be a separate economic unit. These employees will continue to be deemed employees of the transferor.

Rights and obligations under any applicable collective agreement transfer in the same way as described above. If the transferred employees are covered by a collective labour agreement (CLA), this must be adopted and remain in place for a minimum of one year after the transfer, or until expiry of the contract. An employer cannot unilaterally alter the terms of such an agreement, and if the employer wishes to make changes it must be agreed upon with trade unions through normal procedures.

The transferor and the transferee shall inform the respective worker representatives or, in their absence, the workers themselves on the date and reasons of the transfer, its juridical, economical and social consequences for the workers and the planned measures. This information must be provided in written form before the transfer in due time, at least ten days prior to the consultation of the worker representatives.

The transferor and the transferee shall consult the respective worker representatives, before the transfer, in order to get an agreement on the measures to be applied to the workers following the transfer.

On 20 March 2018, Law No. 14/2018 entered into force and amended Portuguese regulations on transfers of undertakings (articles 285-287, 394 and 498 of the labour code). The most significant changes are the following:

- The right to oppose changing of employers. The worker is free to choose between the termination of his/her employment contract with just cause and the right to compensation (similar to the one established for collective dismissals) or to maintain the employment contract with the transferee. The employee shall justify his/her decision on a serious harm, for example, an evident lack of solvency or the difficult financial situation of the transferee, or the lack of trust in the transferee's work organisation policy. This is likely to increase labour litigation. This may also entail some disruptions in the purchase and sale of economic units, because it will be difficult to define which workers will be transferred to the new owner or manager of the economic unit.

- The obligation to disclose the content of the transfer contract between the transferor and the transferee to the labour inspectorate, to the employee representatives and the affected workers.
- In the absence of employee representatives, the affected workers may appoint an ad-hoc commission to intervene in the transfer of undertaking procedure for information and consultation.
- For a 2-year period following the transfer of undertaking, the transferor is jointly liable for any labour-related entitlement past due up to the transfer of the undertaking.
- In the absence of a new collective labour agreement applicable to the transferee, the effects of the former collective labour agreement will be maintained.

Comments

No information available.

Cost covered by

Not applicable

Involved actors other than national government

Trade union
Works council
Other




Involvement others

Labour inspectorate

Thresholds

No, applicable in all circumstances

Sources

-  [Labour code](#)
-  [Flash report](#)
-  [Law 14/2018 of 20 March](#)

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