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European Monitoring Centre on Change

Luxembourg: Employment protection in relation to business transfers

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Luxembourg

Phase:

Management

Type: Employment protection in relation to business transfers

Last modified: 22 January, 2021

Native name: Labour Code

English name: Labour Code

Article

L. 125-1 (1) and 127-1 to L. 127-6

Description

The legislation on transfer of undertaking is applicable to private or public companies which are being transferred within the territory of the Grand-Duchy of Luxembourg. According to the Labour Code, a transfer must involve an economic entity transferring sufficient numbers of staff or technical means required to form its establishment, or at least a unit or centre of activities (whether a central or ancillary activity), and which maintains its identity after the transfer. In particular, a legal transfer, merger, succession or sale will all constitute a transfer, however this list is not exhaustive. The acquisition of interest or shares in a company is not enough to warrant a transfer.

All employees (except civil servants) are covered by the legislation. An 'employee' is a person who works for an employer in a relationship of subordination and is remunerated for that work. This includes secondees and apprentices. All obligations arising from an employment contract (fixed-term or permanent contract) are automatically transferred to the transferee. This includes pension rights and liabilities. However, the transferor and transferee may be jointly liable for claims arising within one year of the transfer. Collective agreements are also transferred on as-is basis, and must remain intact until their expiry or until a new agreement is concluded. Employee benefits are also transferred, however if the transferee is unable to provide the equivalent benefits as agreed upon by the transferor, small amendments to the contract are permitted with the agreement of the employee.

Although employers retain the right to modify employment contracts in the normal course of business, any substantial modification found to be in direct relation to the transfer will be considered invalid. Similarly, employers retain the right to dismiss employees on economic or performance grounds. However, if such actions are found to be in relation to the transfer, they are considered invalid and the employer may be liable to compensate for the unfair dismissal or changes to employment. Only modifications which are seen to benefit the employee will be excepted from this rule.

The transferee or the transferor may, together with the representatives of the employees and the national representative trade unions, agree to modify, to the extent that the current legislation or practice allows it, the working conditions of the employee to safeguard employment by the survival of the enterprise, establishment or part of the undertaking.

If a transfer occurs within three months of, or in relation to insolvency proceedings, any contracts which were terminated in relation to such proceedings will be automatically renewed.

Dismissal outside of the permitted grounds is considered unfair and invalid.

Employees may refuse modification of their contracts, however, this is considered to imply a termination of contract. Moreover, an employee is not entitled to refuse a transfer, provided all the appropriate pre-requisites are met by the transferee. If an employee refuses the transfer, their employment contract is considered to have been terminated.

Comments

It is worth noting that some sectors (e.g. the banking sector) have additional agreements which prevent dismissal after transferral for a defined period (in this case, two years).

Cost covered by

Not applicable

Involved actors other than national government

National government only

Thresholds

No, applicable in all circumstances

Sources

 [Labour Code](#)

 [Le transfert d'entreprise](#)

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