



# EMCC

European Monitoring Centre on Change

## Germany: Employment protection in relation to business transfers

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Germany

Phase:

Management

Type:

Employment protection in relation to business transfers

Last modified: 25 May, 2019

Native name:

Bürgerliches Gesetzbuch

English name:

Civil Code

### Article

613a

### Description

Under the Civil Code, in the case a business or part of a business passes to another owner by legal transaction, the latter succeeds to the rights and duties under the employment relationships existing at the time of transfer. Collectively agreed rights and duties such as wages and wage rises, working time, working conditions or occupational pensions - agreed by either a collective agreement or a works agreement - transfer from the old to the new employer and have to be fully implemented by the new employer if no other collective agreements or wage agreements are in place. This regulation is independent of whether or not the new employer is a member of the employer organisation which signed the agreement. The transfer of the collectively agreed rights to the new employer cannot be amended to the disadvantage of the employee for at least one year after the date of the business transfer.

One year after the date of transfer, the agreed rights and duties stated in the employment contract may be changed if the collective agreement or the works agreement no longer applies or if the application of another collective agreement is agreed between the new employer and the employee.

Neither the previous nor the new employer are entitled to terminate the employment relationship of an employee because of the business transfer. The right to terminate the employment relationship for other reasons is unaffected.

The previous employer or the new employer must notify employees affected by a transfer in text form prior to the transfer of:

1. the date or planned date of transfer,
2. the reason for the transfer,
3. the legal, economic and social consequences of the transfer for the employees, and
4. measures that are being considered with regard to the employees.

The employee may object in writing to the transfer of the employment relationship within one month of receipt of notification. The objection may be addressed to the previous employer or to the new employer.

### Comments

On 27 April 2017 the European Court of Justice ruled that in case national laws provide for the possibility to transfer collectively or individually agreed rights to the new owner, collective agreements in force on the date of transfer, but also agreements subsequent to the transfer which supplement, replace or amend the previous agreement are transferable and shall be applied by the new owner.

#### Cost covered by

Not applicable





#### Involved actors other than national government

- Trade union
- Works council

### Thresholds

No, applicable in all circumstances

### Sources

-  Bürgerliches Gesetzbuch (BGB) § 613a
-  Civil Code
-  Council Directive 2001/23/EC
-  European Court of Justice, ruling of 27 April 2017, C-680/15; C-681/15

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