



THE MERITAS GUIDE
TO EMPLOYMENT LAW ON A BUSINESS SALE
in Europe, Middle East and Africa
April 2015



“What I truly appreciate about working with the Meritas network is knowing that, no matter which Meritas firm I engage, I’m going to get excellent work and superb service.”

*Meredith Stone
Vice-President General Counsel Americas
NACCO Materials Handling Group, Inc.
(NMHG)*

CONNECT WITH CONFIDENCE TO A MERITAS LAW FIRM

Meritas began in 1990 as a result of a US lawyer becoming frustrated at the inconsistent service he received when referring instructions to other US states. He started to develop his own criteria for evaluating performance and service, and from those beginnings Meritas has evolved into an integrated, non-profit alliance of almost 180 independent commercial law firms located in over 70 countries.

When you work with Meritas you will have no fewer than 7,000 experienced lawyers at your disposal, all around the world, in firms that are carefully evaluated and selected and whose work is quality controlled by Meritas.

This guide has been produced by the Meritas Europe, Middle East and Africa Employment Group which is an ongoing

collaboration between 34 local firms on multi-jurisdictional labour and employment law issues.

The Group also enables member firms to share information on substantive and procedural developments in their local markets, to stay current on new and emerging workplace issues and further improve client service.

For help and advice in relation to the employment law aspects of a business sale please contact the Meritas member law firm in the relevant jurisdiction in this guide. Each firm offers substantive and procedural knowledge in every facet of workforce management, including negotiating complex employee relation issues, providing advice and representation on expatriation, and merger/transfer employment issues.

ABOUT THIS GUIDE

Employee rights when businesses are sold/ transferred in Europe stem largely from the EU Acquired Rights Directive (Directive 2001/23).

So it is no surprise that there are similarities and common themes across European jurisdictions, namely;

- The automatic transfer principle (automatic transfer of employees from the old to the new owner, along with their contractual terms);
- Protection against dismissal by reason of a transfer;
- Employer obligations for employees (or their representatives) to be informed (almost all countries) and consulted (most countries) in relation to the transfer.

However, there are still many differences across European jurisdictions, including;

- Variation in the definition of a transfer of a business/service to bring it within the scope of the acquired rights regime (in many countries this will go beyond just a straight forward business sale).

- The consequences of a refusal by employees to be transferred;
- Sanctions imposed for failure to inform and consult and for dismissing by reason of a transfer;
- Rules in relation to small/micro employers.

In the Middle East and Africa the law is different again.

The purpose of this guide is to give HR managers, in-house legal counsel and commercial managers an overview of employee rights and employer obligations when businesses are transferred, so they can better negotiate and implement cross-border transactions, but also more effectively manage staff transferring in and out of different jurisdictions.

The guide answers four key questions:

1. Do employees automatically transfer to the buyer when a business is sold?
2. Are there information and consultation (or other) obligations?
3. Can a buyer change employees' terms and conditions after a sale?
4. What are the sanctions against non-compliant employers?



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I. DO EMPLOYEES AUTOMATICALLY TRANSFER TO THE BUYER WHEN A BUSINESS IS SOLD?

According to Spanish Law, in the event of a transfer of undertaking the new employer shall subrogate in the transferor's rights and obligations. In these situations, when a transfer of undertaking takes place, all employees' rights are transferred to the new employer, including seniority, salary, Social Security obligations, and all working conditions, so there is no need to draft new contracts. This is an act of national application and is regulated in the Workers Statute.

Furthermore, the transfer of undertaking takes place, in accordance with Spanish law, when the transfer affects an economic entity that retains its identity, meaning an organised grouping of resources, which has the objective of pursuing an economic activity.

To determine whether there has been a transfer, a change in the company ownership is necessary and the transfer must affect an economic entity that retains its identity and continues its business activity.

In certain situations, employees can refuse the transfer so they remain working for the transferor, if the transferor continues its activity. These situations usually take place in cases of sub-contracting.

2. ARE THERE INFORMATION AND CONSULTATION (OR OTHER) OBLIGATIONS?

According to Spanish legislation the transferor and the transferee are required to provide employee representatives with the following information, in cases of a transfer of undertaking:

- a) The date of the sale;
- b) The reasons for the sale;
- c) The legal, economic and social implications for the employees; and
- d) Any measures intended to be applied upon the transfer of undertaking.

In the event of there being no employee representatives the transferor and transferee should directly inform employees affected by the transfer of the abovementioned required information. This information should be provided with sufficient notice.

3. CAN A BUYER CHANGE EMPLOYEES' TERMS AND CONDITIONS AFTER A SALE?

The transferee may change the employees' terms and conditions upon a transfer of undertaking if there are justifying business grounds and only after 15 days' consultation.


This 15-day consultation period must be performed with the employees' representatives and is intended to allow a period of negotiation of any measures to be applied upon the transfer of undertaking. This consultation period must take place before said measures are implemented and the parties have the obligation to negotiate in good faith.

With regard to the Acquired Rights Directive 2001/23, its content is regulated in the Workers Statute. Relations between the employers and employees affected by the transfer of undertaking will continue to be regulated by the Collective Agreement in force at the time of the transfer. This Collective Agreement will be applicable until its validity expires or a new applicable Collective Agreement is enforced.

In those cases in which the business maintains its identity, the employees' representatives will continue to retain their current roles and duties.

4. WHAT ARE THE SANCTIONS AGAINST NON-COMPLIANT EMPLOYERS?

The transferor and the transferee will retain joint and several liability for any breaches of the employees' rights and obligations that take place within three years after the transfer. The parties will also be jointly and severally liable for the obligations that arise after the transfer of undertaking when said transfer is considered a criminal offence.



Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.