



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

The Egyptian Labour Law No. 12 of 2003 (Labour Law) governs all employment issues. In addition however, several Ministerial Decrees also govern the employment relationship. The Labour Law and its Decrees aim to increase private sector involvement while at the same time achieving a balance between the rights of employees and employers.

According to Egyptian law, in the case of a transfer of shares of an Egyptian entity, the employment contracts of the employees working for such entity will remain valid and will not be affected by the transfer, as the entity itself will still exist and remain as the employer.

Under this principle, the Labour Law provides under Article (9) that in case of a merger, spin-off, sale or transfer of an entity, the employment contracts of the employees are not affected or terminated. The successor and the former employer are jointly responsible for implementing all the obligations under the employment contracts.

Hence, the transfer of shares does not prevent the transferee from fulfilling the obligations under the existing employment contracts, as they remain in force and binding with all accrued years of service, benefits and rights; the employees' rights should not be reduced, altered or changed. All the liabilities and obligations resulting out of the employees' employment contracts and internal regulations with the transferor will be transferred to the transferee, who will remain liable to satisfy such obligations and liabilities.

An employee cannot refuse the transfer of shares. Nevertheless, the employee may submit his resignation and terminate the employment relationship in case of refusal, and in such circumstances, no compensation will be due to be paid by the employer.

However, if the employer/seller sells one of its businesses/activities, the employees will remain employed by the employer/seller and will not be transferred with the sale of business.

Accordingly, if the buyer, in a business sale scenario, wishes to take over the employees relating to the business, new employment contracts need to be executed between the employees and the buyer in its capacity as the new employer. Before executing said new employment contracts, the existing employment contracts must be terminated. The seller is solely responsible for terminating the employment contracts and for compensating the employees to avoid any potential claims.

Alternatively, no compensation is payable if the seller and the buyer agree that the buyer offers the employees the same salaries and benefits and agrees to take the employees' seniority with the seller into account. In such a case, employment agreements shall be transferred to the new entity practising the transferred activity. Hence, there is no automatic transfer of employees in the case of sale of a business.

The employees of an Egyptian entity will not be affected in the case of a cross border transfer.

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

There is no obligation under the Labour Law to notify the employees or their unions about the transfer of shares of an entity or the sale of business. Hence, the notifying of employees is not necessary.

However, in the case of a business sale and the buyer desires to take over the employees related to the business, new employment contracts may be executed by the new employer and employees, provided that all accrued entitlements are paid to the employees. Thereafter a copy of each new employment contract should be deposited with the competent social insurance office. If the buyer offers to the employees the same salaries and benefits and agrees to consider the employees' seniority the buyer shall proceed to the competent labour office with the sale of business documents and other related documents to change the seller/former employer's name to the buyer/new employer's name.

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


In the case of the transfer of shares, the transferee may not amend any of the terms or conditions of the employment contracts to reduce employees' rights and benefits, nor can they amend the employee's internal regulations. However, if the amendments will be in the employees' interest and benefit, then the transferee may amend the terms and conditions of the employment contracts. The criterion is the reduction of the employees' benefits and rights, even where the employees' consent was obtained.

In the case of the sale of a business, the new employer may execute new employment contracts with different terms and conditions at its sole discretion and in accordance with the provisions of the Labour Law.

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

In the event that the employer does not comply with the procedures provided by law, the employee may claim damages as a consequence of non-compliance.

Pursuant to the Labour Law, the amount of compensation is to be determined by the Labour Court upon the employee's request for compensation. The compensation should not be less than two months' full wage for each year of service (counted as the previous years of service with the former employer), in addition to any other entitlements (i.e. accrued leave, bonus, and others, if any).



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.