

CHANGES TO THE LABOUR CODE

Legal framework applicable to the transfer of undertakings and reinforcement of employees' rights

NEWSLETTER
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Law no. 14/2018, published on the 19th March 2018, introduced some relevant changes to the transfer of undertakings regulations of the Labour Code.

The main amendments are the following:

EMPLOYEES' RIGHTS

An express clarification was added that in the event of a transfer of undertakings employees maintain all their employment rights, namely salary, length of service, professional category and social benefits.

A right of objection of the employees to the transfer of undertakings was expressly created when the transfer is deemed to be seriously detrimental to the employees, in particular as a result of the lack of solvency or difficult financial situation of the transferee, or when the employees have no confidence in the work organization policy of the new employer. If the employees exercise their right of objection, the employees will not transfer.

Employees who wish to object to the transfer must inform their employer in writing within five working days of the deadline to appoint the representative committee, if the latter has not been appointed, or after the agreement or the consultation phase.

Employees who are transferred in circumstances where they had a right of objection and did not exercise it are granted a right to terminate their employment contract for cause and have a right to compensation in the same terms as in collective redundancies.

CHANGE OF THE CONCEPT OF "ECONOMIC UNIT"

To the concept of economic unit which was defined as (i) a set of organized means, (ii) for the purpose of carrying out an economic activity, main or ancillary, has been given the following additional requirements: (iii) which is deemed as a productive unit, (iv) with autonomous technical organization, (v) that maintains a proper identity .

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LIABILITY OF THE TRANSFEROR

The liability of the transferor is no longer established in general terms. The law now expressly provides the joint liability of the transferor for the employee claims arising out of the employment contract, its breach or its termination, as well as the corresponding social charges, expired up to the date of the transfer, assignment or reversal.

This liability is extended to two years from the date of the transfer.

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OBLIGATIONS OF THE TRANSFEROR

In the case of employers with more than 50 employees, the transferor must inform the labour authorities about: a) the contents of the agreement between the transferor and the transferee, or b) if there is a transfer of an economic unit, of all the elements that are part of it. This information may also apply to companies with under 50 employees, at the request of the labour authorities.

INFORMATION AND CONSULTATION PROCEDURE

The information provided to employees and their representatives must include the contents of the agreement between transferor and transferee, without prejudice to the duty of confidentiality of the employees' representatives.

At the request of either party (transferor/transferee and employees' representatives), the labour authorities may participate in the negotiations aiming at confirming that the process has been conducted properly; conciliating interests of the parties and respecting the employees' rights.

In the absence of employees' representatives being involved, the employees may appoint a representative committee with a maximum of three or five members, depending on whether the transfer involves up to five or more employees.

If no representative committee is appointed, the transferor must inform the employees of the contents of the agreement reached or of the end of the consultation.

The Ministry of Labor will be able to participate in the negotiations at the request of either party.

DEADLINE FOR IMPLEMENTING THE TRANSFER

The transfer can only occur after seven working days of the deadline for the appointment of the representative committee, if none was appointed, or after the agreement or the consultation of the employees' representatives.



COLLECTIVE BARGAINING

If no collective bargaining agreement applies to the transferee after 12 months of the transfer, the CBA that applied previously to the transferor shall be maintained.

*Amendments are
effective as of
20th March.*

ENTRY INTO FORCE

These amendments are effective as of 20th March 2018.

For the official Portuguese version of the new law, please click [here](#).

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