

FINLAND

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In what business transfer situations is there statutory protection for employment rights?

The Finnish Employment Contracts Act ("ECA") implements the EU Acquired Rights Directive in Finland. Protection applies where there is a transfer of an undertaking (or a part of one) which is an organised business entity situated in Finland, and the entity retains its identity and continues to operate in the same or similar manner without interruptions or major delays after the transfer of business. It can apply to intra-group reorganisations and outsourcing, insourcing or changes of contractor.

What employment rights are protected?

Pursuant to Chapter 1, Section 10 ECA, all employees within the business being transferred will automatically transfer to the new owner at the date of the transfer of business, on their current terms of employment and with continuity of service. All the rights and obligations deriving from the existing employment agreements are transferred to the transferee.

What protection is there against dismissal?

An employer's right to terminate an employment agreement is regulated by the ECA. An employer may only terminate an employment agreement if legal termination grounds set out in the ECA exist. The transfer of business does not in itself constitute a ground for dismissal by the transferor or the transferee.

Can terms of employment be harmonised with the transferee's existing workforce?

Yes, but only with the employee's consent in respect of changes to an individual employment agreement. The transferee is not entitled to unilaterally change essential terms of employment in connection with a transfer of business without legal termination grounds.

On the other hand, the transferee is obligated to harmonise the terms of employment with its existing workforce pursuant to the principle of equal treatment under the ECA within a certain time period prescribed by case law.

Harmonising of terms of employment generally refers to leveling up the less beneficial terms of employment (ie, salary of the transferred employees or the existing workforce). The transferee is, however, also obligated to harmonise other terms either by improving or reducing the terms of employment of the existing workforce or the transferred employees. It should be noted that an employer may not, however, unilaterally change essential terms of

employment (ie, salary) without legal termination grounds or the employee's consent.

There are no fixed time periods set out in case law but the employer is obligated to pursue the harmonising actions within a reasonable time period. A reasonable time period can be a few months or years depending on the circumstances of the individual case.

Can employees opt out of the transfer?

No, there is no specific right to opt out of the transfer. Transferring employees may, however, terminate the employment as from the transfer date regardless of any applicable notice periods, if the employee has been informed of the transfer of business no less than one month before the date of the transfer. If the employee has been informed of the transfer later than that, the employee is entitled to terminate the employment as from the transfer date or a date following it but not later than within one month after having been informed of the transfer.

In addition, if the terms of employment are unilaterally changed to the detriment of an employee as a result of the transfer of business and the employee terminates the employment due to this, the employer is considered to be responsible for the termination of employment. In this connection, the employee may claim for compensation equalling their salary of 3-24 months for unlawful termination of employment.

Must employers inform/consult about the transfer (excluding any redundancy obligations)?

The Finnish Act on Co-Operation within Undertakings ("Act on Co-Operation") includes an information obligation on the transferor and the transferee in connection with a transfer of business. The Act on Co-Operation is applicable if the employer regularly employs at least 20 employees. If the Act on Co-Operation is applicable, both the transferor and the transferee have an obligation to inform the representatives of the employees of specific information about the transfer (including the date, grounds and consequences of the transfer) and planned measures that concern the employees. If there are no elected employee representatives, the information can be provided to all the transferring employees collectively. There are no formal requirements on how the information is provided.

How long will the information and consultation process take?

The transferor must provide the information as early as possible. It is recommended to provide the information as soon as the information is available and can be shared with the employees. However, it is common that the information is provided after the signing of the business transfer agreement or when the transfer is otherwise clear, but it must be given prior to the transfer date. The transferee must provide the information within one week after the transfer. Additionally, the transferee shall provide the employee representatives with an opportunity to ask questions and must answer such questions.

What is the potential penalty for breach of the consultation requirements?

If the transferor or the transferee breaches the information obligation, a fine can be imposed for violation of the co-operation obligation in accordance with Section 67 of the Act on Co-Operation.

What external approvals or notification are required (excluding any redundancy obligations)?

No external approval is required in relation to the transfer of employees. However, an amendment notice regarding the change of the employer must be submitted to the Finnish Patent and Registration Office. Where the workforce includes migrant workers requiring a work permit, the employer also has an obligation to inform the employment and economic development office (TE services).

Are there any proposals for reform?

We are not aware of any proposals for legislative reform at this time.