
United States of America

Transfer of Business

Trigger point	<p>In the event of a Transfer of a Business, the contracts of employment of employees who are assigned to the business transferring will generally not be automatically transferred to the Transferee, unless the contract contains an express assignment provision and such advance assignment is permitted by state law.</p> <p>In cases where assignment is not provided for in the employment contract or otherwise not permitted, the employee will need to either: (i) consent to the transfer of his or her contract at the time of the Transfer of a Business; or (ii) be terminated by the Transferor (or resign from his or her employment) and enter into a new contract with the Transferee.</p>
Obligations	<p>There are no mandatory obligations to inform and consult with employees unless the employees are members of a Trade Union. However, in practice, the Transferor and Transferee may wish to do so.</p>
Timing	<p>There are no mandatory obligations to inform and consult with employees, and therefore, no prescribed timeframe if the Transferor and Transferee choose to do so.</p>
Representatives	<p>There is no requirement for employee representatives to be appointed.</p>
Information/Notification	<p>There are no mandatory obligations to inform employees but, in practice, employees should be provided with details of the reasons for the Transfer of a Business and the implications for them.</p>
Consultation	<p>There are no mandatory obligations to consult with employees.</p>
Veto rights	<p>Neither the employees nor the employee representatives have any veto rights, and neither can stop a Transfer of a Business from proceeding. However, as noted above, employees must consent to the transfer of their employment through pre-existing contracts of employment, contemporaneous consent to the transfer of their employment or acceptance of offers of employment from the Transferee.</p>
Penalties	<p>As there is no mandatory obligation to inform and consult with employees, there are no penalties for failing to do so.</p>
Other	<p>The Transferor and/or Transferee must comply with any additional process prescribed in any applicable CBA.</p>
Impact of Share Sale	<p>There should generally be no impact on contracts and any applicable CBA and no need to transfer employees, because the employees continue to be employed by the same entity following the Share Sale.</p>

Intra-Group Transfers

Subject to the terms of any contracts of employment (including any company severance plans) or CBA, employees generally can be transferred within related entities through an Intra-Group Transfer by means of a simple notice of transfer.

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Redundancies

Collective Redundancies

Threshold

The obligations set out below apply to employers with 100 or more employees, excluding part-time employees. These obligations are triggered under Federal Law where, during a 30-day (or, in certain circumstances, 90-day) period:

- (i) there is a plant closure resulting in an employment loss affecting 50 or more employees (excluding “part-time” employees) at a single site; or
- (ii) there is a mass layoff resulting in the employment loss of:
 - (a) 500 or more employees (excluding “part-time” employees) at a single site; or
 - (b) 50 or more employees (excluding “part-time” employees) at a single site representing at least 33 percent of the employees (excluding “part-time” employees) at that site.

“Part-time” employees means employees who are employed for an average of less than 20 hours per week or who have been employed for less than six of the 12 months preceding the date on which notice is required.

“Employment loss” means an employment termination (other than a termination for cause, voluntary departure, or retirement), a layoff exceeding six months, or a reduction in hours of work of more than 50 percent during each month of any six-month period.

Thresholds and obligations may be different in some states.

Obligations

The employer must provide 60 days’ written notice in advance of the plant closure or mass layoff. The notice must be provided to:

- (i) the chief elected officer of any existing Trade Union representing the affected employees (if any), or where there is no chief elected officer, the affected employees themselves (including any “part-time” employees);
- (ii) the State Dislocated Worker Unit; and
- (iii) the chief elected official of the unit of local government in which the employment site is located.

There are no mandatory obligations to inform and consult with employees unless the employees are members of a Trade Union. Such obligations may be specifically provided for in a CBA with the Trade Union or may be required pursuant to federal labor law.

Timing

The employer must provide written notice as set out below at least 60 days in advance of the proposed dismissals. This notice period may be longer in some states.

Representatives

There is no requirement for employee representatives to be appointed.

Information/Notification

There are two main notifications:

- (i) **Notification to the State Dislocated Worker Unit and the Chief Elected Official of the Unit of local government:** The following information must be provided in writing:
 - (a) the name and address of the site where the plant closure or mass layoff will occur;
 - (b) the name and telephone number of the company official who can be contacted for further information;
 - (c) confirmation as to whether the action is permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
 - (d) the expected date of the first termination, and the anticipated schedule for implementing the terminations;
 - (e) the job titles of affected positions and the number of affected employees in each job classification;
 - (f) an indication of whether or not bumping rights exist; and
 - (g) the name of each Trade Union representing affected employees, and the name and address of the chief elected officer of each Trade Union.
- (ii) **Information to the Trade Union or the affected employees:**
 - (a) **If the employees are represented by a Trade Union:** The employer must notify the Trade Union of the information set out in (i)(a) – (d) above, as well as the job titles of positions to be affected and the names of the employees currently holding those affected jobs.
 - (b) **If the employees are not represented by a Trade Union:** The employer must notify the affected employees of the information set out in (i)(b), (c) and (f) above, as well as the expected date that the plant closure or mass layoff will commence and the expected date that the individual will be terminated.

Consultation

There are no mandatory obligations to consult with employees, unless employees are members of a Trade Union.

If the employees are represented by a Trade Union, the employer will likely be required by Federal Labor Law to negotiate with the Trade Union regarding the effects of the plant closure and mass layoff but not about the decision to undertake the plant closure or mass layoff.

Penalties

Failure to comply with the above process could result in individual or class-based claims, which (if successful) could result in awards of 60 days' pay and benefits per affected employee, as well as penalties of up to US\$500 for each day of violation and legal fees.

Other

The employer must comply with any additional process prescribed by state law and in any applicable CBA.

Requirements and timings may vary from state to state.

Individual Redundancies

Threshold	None, unless a CBA specifies otherwise.
Obligations	There are no mandatory obligations to inform and consult with employees, unless a CBA specifies otherwise.
Timing	There are no mandatory obligations to inform and consult with employees and therefore, no prescribed timeframe if the employer chooses to do so.
Representatives	There is no requirement for employee representatives to be appointed, unless a CBA specifies otherwise.
Information/Notification	There are no mandatory information and notification obligations.
Consultation	There are no mandatory obligations to consult with employees.
Penalties	As there is no mandatory obligation to inform and consult with employees, there are no penalties for failing to do so. However, depending on the reasons for termination, employees may be able to bring claims, for example, for discrimination.
Other	<p>The employer must comply with any additional process prescribed by state law and in any applicable CBA.</p> <p>Requirements and timings may vary from state to state.</p> <p>Specific rules may apply to the dismissal of certain categories of employee, depending on which category they belong to.</p>