

L.N. 363 of 2012

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

**Transfer of Business (Protection of Employment)
(Amendment) Regulations, 2012**

IN exercise of the powers conferred by articles 38 and 48(2) of the Employment and Industrial Relations Act, the Minister for Justice, Dialogue and the Family has made the following regulations:-

1. The title of these regulations is the Transfer of Business (Protection of Employment) (Amendment) Regulations, 2012, and these regulations shall be read and construed as one with the Transfer of Business (Protection of Employment) Regulations, hereinafter referred to as "the principal regulations".

Citation.

S.L. 452.85

2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends
regulation 2 of
the principal
regulations.

(a) immediately after the definition "Act", there shall be added the following new definition:

"service provision change" means a situation in which:

(i) activities cease to be carried out by a person, hereinafter referred to as a "client", on his own behalf and are carried out instead by another person on the client's behalf, hereinafter referred to as a "contractor";

(ii) activities cease to be carried out by a contractor on a client's behalf, whether or not those activities had previously been carried out by the client on his own behalf, and are carried out instead by another subsequent contractor on the client's behalf; or

(iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf, whether or not those activities had previously been carried out by the client on his own behalf, and are carried out instead by the client on his own behalf;"

B 3506

(b) in the definition "transfer", for the words "an economic activity;" there shall be substituted the words "an economic activity and shall include a service provision change in accordance with these regulations;"

(c) in the definition "transferee", for the words "of a transfer, becomes the employer", there shall be substituted the words "of a transfer, which includes a service provision change, becomes the employer"; and

(d) in the definition of "transferor", for the words "part of the undertaking, ceases to be the employer", there shall be substituted the words "part of the undertaking, which includes a service provision change, ceases to be the employer".

Amends
regulation 3 of
the principal
regulations.

3. Regulation 3 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof:

(i) paragraphs (b) and (c) thereof shall be renumbered as paragraphs (c) and (d) respectively; and

(ii) immediately after paragraph (a) thereof, there shall be added the following new paragraph:

"(b) to a service provision change;" and

(b) immediately after sub-regulation (2) thereof, there shall be added the following new sub-regulation:

"(3) A transfer of an undertaking or part of an undertaking in terms of these regulations:

(a) may be effected by more than one transaction; and

(b) may take place whether or not any property is transferred to the transferee by the transferor."

Adds a new
regulation to the
principal
regulations.

4. Immediately after regulation 3 of the principal regulations,

there shall be added the following new regulation:

"Rights,
powers,
obligations,
etc., after
transfer.

3A. (1) After a transfer, the contract of employment of each person employed by the transferor shall have effect as if originally made between the person so employed and the transferee.

(2) On the completion of a transfer, all the transferor's rights, powers, obligations and liabilities under or in connection with any contract of employment referred to in sub-regulation (1) shall be transferred to the transferee:

Provided that the transferor shall be responsible to reimburse the transferee for the payment of any statutory bonuses and income supplements in terms of law which relate to the period in employment with the transferor but payment of which becomes due on a date when the employee is employed by the transferee, and payment for the *pro rata* annual leave entitlement not availed of during employment with the transferor in respect of the period during which the transferor was the employer, whilst the transferor shall have the right to be reimbursed by the transferee in respect of any annual leave which had been granted to the employee by the transferor prior to the date of transfer which was in excess of the *pro rata* entitlement of annual leave till the date of transfer:

Provided further that in the case where employees who were employed in the business or part of the business to be transferred have been made redundant prior to a transfer of business which would have otherwise resulted in the transfer of their employment with the transferee, the transferee has an obligation to re-employ, with the same conditions of employment, such employees if their previous posts become available within one year from the notice of redundancy according to and in terms of article 33 of the Act and the transferor shall provide all the necessary information in order for the transferee to be able to abide by this requirement."

Amends
regulation 4 of
the principal
regulations.

5. In the proviso to regulation 4 of the principal regulations, the words "also be given to that employee." shall be substituted by the words "also be given to that employee and shall be provided by the transferor by the date of the transfer of business."

