Newsletter

Transfer of undertaking: Prohibition to dismiss in view of transfer of undertaking

Planning on a merger, acquisition or division of (part of) a business in the Netherlands or any other EU country? Then be aware of the EU law that sets out the strong position of employees in case of a transfer of undertaking (Directive 2001/23/EC). Russell Advocaten will inform you of the EU law on transfer of undertaking and the consequences thereof by a series of newsletters. This time: Prohibition to dismiss in view of a transfer of undertaking.

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About the author:

Jan Dop is a partner at Russell Advocaten. He advises and represents corporations, entrepreneurs and HR departments in corporate and commercial matters.

Dismissal in view of transfer of undertaking not allowed

Dismissing the employee(s) due to or in view of a transfer is prohibited. This applies to both the transferor and transferee of a business. If the employer acts in violation of this prohibition on dismissal, the employee may within 2 month request the court to quash the dismissal or to grant a compensation. However, dismissal is allowed in case the reason for dismissal does not have any connection with the transfer of undertaking, for instance, because of unsatisfactory performance of the employee or economical, technical or organizational reasons (referred to as "eto-reasons").

Unwilling employee

In the event the employee unambiguously refuses to become employed by the transferee, the employee will not be transferred by law to the transferee and the employment contract with the transferor will terminate. If the reason for the refusal of the employee is due to a significant disadvantage he will suffer because of the

transfer of undertaking (for instance, more time commuting) and this reason justifies termination of the employment contract, the termination will be at the expense of the employer and the latter will have to pay a transition compensation.

More information

Would you like to receive more information about the EU law on transfer of undertaking and the consequences thereof? Or do you have any other questions on employment law? Please contact:

Jan Dop, LL.M. (jan.dop@russell.nl).