

What Implications Does A Change In The Ownership Of A Business Have For Employment?



In Quebec, many legal consequences must be considered when the alienation or concession of a business occurs, especially those that are related to labour relations. More specifically, what implications does a transfer as such have on the alienated or licenced business' employees? In order to answer this question, it is of utmost importance to first determine whether the relevant situation occurs in a unionized environment or not.

Unionized employees

If the employees that work for the alienated business are unionized, section 45 of the *Labour Code* is henceforth applicable and provides that the alienation or the operation – by another in whole or in part – of an undertaking does not invalidate any certification or collective agreement. As such, the new employer shall be bound by the certification and the existing collective agreement and must become *ipso facto* a party to any proceeding relating thereto, in the place and stead of the former employer.

In light of the foregoing, and where an employee is terminated slightly prior to the transfer of a business, the union may file a grievance against the new employer who is liable and will have to assume the risks surrounding this recourse, subject to a contrary agreement between the former and the new employer in the company's purchase agreement.

It is worth noting that where there is only a part of a business's operations that is transferred – also referred to as sub-contracting – the foregoing principle does not apply. In such cases, the new employer is not bound by the union's certification nor the existing collective agreement since the transfer/alienation does not involve the majority of the business' key elements

(such as the employees, equipment, know-how, expertise, premises, financial resources, etc.).

Non-unionized employees

In a non-unionize environment, sections 96 and 97 of the *Act Respecting Labour Standard* are applicable, as well as section 2097 of the *Civil Code of Quebec*. In such cases, a business' alienation or any change in its legal structure does not imply the termination of the employment agreement between an employee and the employer. The new employer is also solidarily bound by the existing contracts and must respect and take on all of the former employer's responsibilities. Both the former and new employer consequently become bound with regards to any civil claim or recourse that is pending at the moment of the company's alienation. For instance, an employee that has not been dismissed for a good and sufficient cause prior to the company's transfer can file a claim to the Labour Standards Commission against both the former and new employer.

In light of the considerations hereinabove identified, a company's alienation or concession cannot alter the relationship between employees and the employer, regardless of whether it is conducted within a unionized environment or not. As stated by commissioner Turcotte in *Bucovetsky v. 180634 Canada inc* :

"new business owners cannot hide behind the fact that former business owners are those who made the decisions [our translation]".