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Business Transfers / Compensations: A Costa Rican Overview

In Costa Rica business transfers could be deemed as mergers, takeovers or any other commercial mechanism which does not precisely mean that employee's rights and conditions will change; nevertheless, business transfers might result in the modification of the employment structure, which may be manifested as employer substitution, change of certain labor conditions, or even redundancies.

If business transfers result in employer substitution in Costa Rica, our Labor Code in Article 37, provides that "*Employer substitution shall not affect the employment agreements; therefore, detriment against employees shall not exist. The former employer will be jointly liable along with the new employer for those obligations that result from the agreement or law prior to the substitution date and for a term of up to six months. After the end of the term, the liability shall be only for the new employer*".

In the event of an employer substitution, labor conditions cannot be changed in any way that affects the employee; it is highly important to implement an in-depth analysis of all employment conditions before the transfer, because the new employer will be the one obliged to maintain all labor rights; if not, it may be exposed to internal claims and even lawsuits.

Nonetheless, if business transfers do not lead to an employer substitution but do require the modification of employment rights such as compensation, this cannot be changed in detriment of the employee. Consequently, before performing any modifications, this must be analyzed to determine feasibility or not.

Moreover, if business transfers cause redundancies, it is fundamental to know if there are special conditions to be considered before terminating employees. For example, the existence of change of control agreements usually trigger golden parachutes, including specific payout calculation methods or even predefined amounts agreed with the prior employer may arise. This directly impacts the compensation of an employee; however, there may be companies that are not in the position to observe change of control agreements.

In view of the foregoing, before performing a business transfer, it is vital to conduct a due diligence on labor matters and mainly for those related with compensation, which cannot be changed unilaterally, and noncompliance thereof can cause severe consequences for the employer.

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