

Conversations



Purchasing a business

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LEGAL MATTERS



When you buy a business, often one of the most important aspects of the business is the staff.

Generally purchasers want to "buy" the employees as part of a business purchase to help keep continuity in the business and it is important that the Agreement for Sale and Purchase of a Business includes all necessary provisions regarding employees/staff.

Key things to be aware of when buying a business where there are employees are:

■ Generally when you buy a business, the employer of the staff will change from being the seller to the purchaser. The employees' employment with the seller therefore ceases on settlement date (the date ownership changes) so the seller needs to terminate the employment of the various

staff on the settlement date;
■ The purchaser will need to enter into new employment agreements with the employees from the settlement date;
■ Generally the purchaser will want to choose which employees they take over and will offer employment to those employees;
■ The majority of employees will be covered by an "employee protective provision" in their employment agreement, and any restructuring required during the business purchase will require the seller to enter into negotiations with the purchaser in accordance with the employee protection provision;
■ There may also be "protected" or "vulnerable" employees in the business, who are afforded additional protection under the law. Protected employees are defined by law, and include those working in food catering or cleaning services, as well as orderly or laundry services in certain sectors. Note that this applies to any businesses with 20 or more employees, so if you are



"The purchaser will need to enter into new employment agreements with the employees."

buying a business with less than 20 employees, you will not need to comply with these provisions;
■ "Protected" or "vulnerable" employees may elect to transfer to the new employer on existing terms or on new terms.

The existing employer must provide certain information to the employees before the employees make their decision, and a failure

to comply may result in penalties. If an employee in this "protected" or "vulnerable" category is made redundant, there are also requirements in terms of negotiating redundancy entitlements, even if not contained in the employment agreement;
■ Entitlements such as leave are to be treated as continuous where a protected employee is taken over by the purchaser (for example their leave balance won't change). Often the seller and the purchaser will come to an arrangement regarding reimbursement for this to the purchaser in the Agreement for Sale and Purchase.

■ Entitlements for all other non-protected employees may be transferred to the new employer, depending on what the seller and the purchaser agree. Generally, either:

The seller pays out all leave owing at termination of the employee's employment and the employee starts afresh with the purchaser in terms of leave and entitlements; or the entitlements and leave are treated as continuous, but the seller reimburses the purchaser for such entitlements and leave.

Buying shares in a company
If you are buying shares in a company, rather than buying the assets of a business, then the above will not apply as in that case the employer (being the company) remains the same regardless of the shareholdings changing.

It is very important to take advice about all aspects of buying or selling a business, including employees, to make sure that all employees are treated correctly and that you are getting exactly what you are expecting out of the purchase.

■ If you have a legal inquiry you would like discussed in this column email Alan on aknowsley@raineycollins.co.nz.

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