

Employee entitlements on a transfer of business

Find out what entitlements are affected when business changes owners.

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Entitlements

When there is a transfer of business a new employer has to recognise an employee's service with the old employer when working out most of their entitlements, including:

- sick and carer's leave
- requests for flexible working arrangements
- parental leave.

However, there are some entitlements that the new employer might not have to recognise. These include:

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Redundancy

A new employer that isn't an [associated entity](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2116) (www.fairwork.gov.au/Dictionary.aspx?TermID=2116) of the old employer can choose to not recognise an employee's service with the old employer for redundancy entitlements. The old employer will then need to pay redundancy to the employee upon termination.

However, an employee will not be entitled to redundancy pay if they reject the new employer's job offer and:

- its terms and conditions are similar to those of the old job
- it recognises the employee's service with the old employer for redundancy pay
- there would have been a transfer of employment if the employee had taken the job.

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Annual leave

The following two things can occur with annual leave:

- annual leave that accumulated with the old employer will be carried across to the new employer, or
- where the employers are not associated entities, the new employer can decide not to recognise an employee's service with the old employer. In this case, the old employer has to pay out the employee's untaken accumulated annual leave.

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Long service leave

In some cases the new employer doesn't have to recognise an employee's service with the old employer when calculating an entitlement to long service leave.

This can happen when:

- an employee was not entitled to long service leave under a [registered agreement \(www.fairwork.gov.au/Dictionary.aspx?TermID=2034\)](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034) at 31 December 2009
- an agreement was made on or after 1 January 2010 that replaces it
- the new agreement says that service under an older agreement does not count towards long service leave.

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Unfair dismissal

In some cases the new employer doesn't have to recognise an employee's service with the old employer for the purposes of unfair dismissal.

This can happen when the:

- employee is a transferring employee
- businesses are not associated entities, and
- the new employer lets the employee know in writing before the new employment starts that service with the old employer would not be recognised.

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Notice of termination

A transfer of business ends an employee's position with the old employer. Therefore, the old employer has to:

- give notice of termination, or
- provide payment instead of notice.

If a transfer of business happens before the notice period ends, then the old employer must still pay the rest of the notice period.

If a transferring employee, who was given notice by the old employer at the time of sale, is later terminated by the new employer, then the new employer must give notice of termination. Only service with the new employer counts for determining how much notice the employee gets.

Example of notice during a transfer:

Andrew has been working for his employer for 5 years. He has been told that he will be transferring to a new employer. His boss provides 4 weeks' notice of termination.

Within the first 6 months of working for the new employer, Andrew is told that he is no longer required. Andrew's new employer only has to provide 1 weeks' notice.

Source reference: [Fair Work Act 2009 s.311 - 316](http://www.comlaw.gov.au/Series/C2009A00028) [¶] (<http://www.comlaw.gov.au/Series/C2009A00028>)

Tools and resources

- [National Employment Standards \(www.fairwork.gov.au/Employee-entitlements/National-Employment-Standards/default\)](http://www.fairwork.gov.au/Employee-entitlements/National-Employment-Standards/default)
- [Find an agreement - Fair Work Commission \(https://www.fwc.gov.au/awards-and-agreements/agreements\)](https://www.fwc.gov.au/awards-and-agreements/agreements) [¶]

Related information

- [Awards \(www.fairwork.gov.au/awards-and-agreements/Awards/default\)](http://www.fairwork.gov.au/awards-and-agreements/Awards/default)
- [Notice and final pay \(www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default\)](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default)
- [Annual leave \(www.fairwork.gov.au/leave/annual-leave/default\)](http://www.fairwork.gov.au/leave/annual-leave/default)
- [Redundancy \(www.fairwork.gov.au/ending-employment/redundancy/default\)](http://www.fairwork.gov.au/ending-employment/redundancy/default)

Help for small business

Find tools, resources and information you might need in our [Small business showcase \(https://smallbusiness.fairwork.gov.au/\)](https://smallbusiness.fairwork.gov.au/) .

Think a mistake might have been made?

Mistakes can happen. The best way to fix them usually starts with talking.

Check out our [Fixing a workplace problem \(www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default\)](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/default) section for practical advice on:

- figuring out if a mistake has been made
- talking to your employer or employee about fixing it
- getting help from us if you can't resolve it.

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Contact us

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Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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