

When businesses change owners

Change of business owners often occurs where there is a sale of business. It is also known as a transfer of business. This can affect an employee's entitlements.

What's a transfer of business?

A transfer of business is when all of the following happen:

- an employee begins working for the new employer within 3 months of ending their job with a previous employer
- the employee's duties are the same or nearly the same as they were for the previous employer
- there is a connection between the previous and new employers.

An employee that moves from the old employer to the new employer in a transfer of business is called a transferring employee.

What's a connection between employers?

There may be a connection between employers when one or more of the following occurs:

- the old employer sells some or all of the businesses assets to the new employer (eg. machinery or computer systems)
- the employers are associated entities (<https://www.fairwork.gov.au/Dictionary.aspx?TermID=2116>), meaning they are related bodies corporate or one has some controlling interest in the other
- the old employer outsources the work the employee does to the new employer, or
- the new employer stops outsourcing work to the old employer.

What covers employees during a transfer of business?

When businesses change owners, a transferring employee can either:

- if they were covered by an enterprise award, enterprise agreement or other registered agreement (<https://www.fairwork.gov.au/Dictionary.aspx?TermID=2034>), remain covered by the same instrument as they were before transferring (if covered by an agreement, this will continue to apply until the agreement is terminated or is replaced) or
- if they were covered by an award, switch to the award covering the new employer, if it covers their job and industry.

New employees

Any new employees that you engage will be covered under the applicable modern award or another enterprise agreement. If there is no modern award or enterprise agreement that covers the new staff, then the transferable instrument may also apply to the new employees.

What to do next

- Search the Fair Work Commission's website (<https://www.fwc.gov.au/awards-and-agreements/agreements>)  for an agreement
- Search Awards (www.fairwork.gov.au/awards-and-agreements/Awards/default) to find the award that applies
- Download our Setting up a performance system checklist (DOCX 32.7KB) (www.fairwork.gov.au/ArticleDocuments/715/setting-up-a-performance-system-checklist.docx.aspx)
- Read the Australian Securities and Investments Commission (<http://asic.gov.au/for-business/your-business/tools-and-resources-for-business-names-and-companies/asic-guide-for-small-business-directors/>)  guide for small business directors

Help for small business

- Find tools, resources and information you might need on our Small business page (www.fairwork.gov.au/Find-help-for/Small-business/default) .

You might also be interested in

- When businesses change hands fact sheet (www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/when-businesses-change-hands)

- [Employee entitlements on a transfer of business \(www.fairwork.gov.au/Employee-entitlements/When-businesses-change-owners/employee-entitlements-on-a-transfer-of-business\)](http://www.fairwork.gov.au/Employee-entitlements/When-businesses-change-owners/employee-entitlements-on-a-transfer-of-business)

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