

To employers and workers:

Guidelines Concerning Procedures for Protection of Workers in Assignment of Business and Mergers

- Main Points of Guidelines Concerning Assignment of Business, etc. - (Application from: [September 1, 2016](#))

Recently, the "Guidelines Concerning Matters to be Taken into Account by Companies, etc. in Assignment of Business and Mergers" (hereinafter referred to as, "Guidelines Concerning Assignment of Business, etc.") were formulated, and its application started in September 1, 2016. Guidelines Concerning Assignment of Business, etc. stipulate matters that companies, etc. (meaning companies and other business operators which use workers) should take account of, when they embark on assignment of business or mergers. These Guidelines seek to (i) ensure that companies, etc. obtain worker consent based on their true intentions and required for labor contracts to be succeeded to by another company, in the case of assignment of business, and to (ii) enhance the mutual understanding between workers as a whole and the employer, thereby contributing to smooth implementation of assignment of business, etc. and the protection of workers.

Among such matters, those on assignment of business apply only to assignment of business for which assignment of business contracts are executed on or after September 1, 2016.

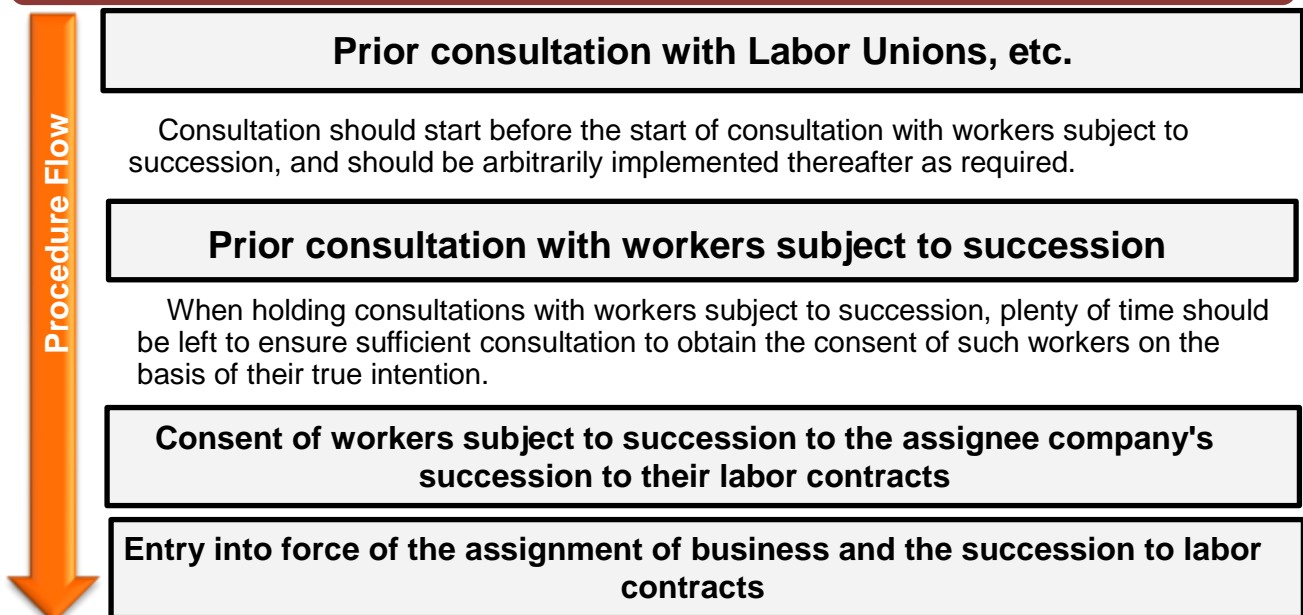


In the case of implementing assignment of business: To have the assignee company, etc. (the company taking over the transferred business) succeed to a labor contract executed between the assignor company, etc. (the company to transfer its business) and the worker concerned, it is necessary to obtain consent of the worker subject to such succession.



In the case of implementing a company split: it is necessary to comply with provisions for the protection of workers set forth in the Act on the Succession to Labor Contracts upon Company Split ("Labor Contract Succession Act"), etc.

Flow and Overview of Procedures for Protection of Workers in Assignment of Business



Ministry of Health, Labour and Welfare /
Prefectural Labour Bureau

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Matters to Consider in Assignment of Business

Matters concerning procedures, etc. to be implemented with workers

1. Prior consultation with workers subject to succession

In the case of implementing assignment of business, where the assignee company, etc. is to succeed to labor contracts executed between the assignor company, etc. and its workers, it is necessary to obtain the consent of such workers subject to the succession pursuant to the provisions of the Civil Code. For this reason, prior consultation should be held to work toward obtaining consent of the workers.

Q. What are the subject matters of prior consultation?

A. Sufficient explanations should be provided on the following such matters: the overall situation relating to the assignment of business concerned, (~~including matters concerning the prospect of the assignor company, etc. and the assignee company, etc. performance of obligations~~), the overview of the assignee company, etc. for which the workers subject to succession will work, and their working conditions (including the operations they are scheduled to engage in, their workplaces, and other employment details).

Q. By when should prior consultation start?

A. When holding consultations, plenty of time should be left to ensure sufficient consultation to obtain consent of workers on the basis of their true intentions.

Matters concerning procedures, etc. to be implemented with labor unions, etc.

1. Prior consultation with labor unions, etc.

The assignor company, etc. should endeavor to hold prior consultation with the labor union organized by the majority of workers where such a union exists, or with the person representing the majority of workers where such a union does not exist, in order to obtain the understanding and cooperation of its workers.

Q. What are the subject matters of prior consultation?

A. Subject matters of prior consultation include the background of and reasons for the assignment of business concerned, ~~matters concerning the prospect of the assignor company, etc. and the assignee company, etc. performance of obligations~~, the scope of workers subject to succession, and matters on the succession to collective agreements.

Q. By when should prior consultation start?

A. Consultation with labor unions, etc. should commence before the start of consultation with workers subject to succession at the latest, and should be arbitrarily implemented thereafter as required.

2. Relationship with the right to collective bargaining under the Labor Union Act (matters common to workers, labor unions, etc.)

With regard to subject matters of the collective bargaining prescribed in Article 6 of the Labor Union Act, it is important to note that the assignor company, etc. may not refuse a lawful request for collective bargaining made by a labor union pertaining to the assignment of business concerned on the ground that consultations have been held with workers subject to succession, the labor union, etc. Further, the assignor company, etc., is required to negotiate with a labor union in good faith when such a request as aforesaid is made by it with regard to the above subject matters.

3. Matters to consider pertaining to dismissal

It is important to note that any dismissal, etc. may not be held valid where it is based on the fact that the relevant worker subject to succession does not consent to his/her labor contract being succeeded to, or that the business such worker engaged in has been transferred.

4. Other matters to consider

In the selection of workers subject to succession, it is necessary for the assignor company, etc. or assignee company, etc. not to commit any unfair labor practice such as treating a labor union member in a disadvantageous manner, or any other illegal act.

3. Matters to consider with regard to collective bargaining

In determining which party is the employer that should deal with collective bargaining, it is important to note that in some court precedents, a business operator other than the person employing others was found to fall within the category of employer under the Labor Union Act, and that some orders issued by the Central Labor Relations Commission found that the assignee company, etc. could, under certain circumstances, fall within the category of employer under the same Act even before the implementation of the assignment of business concerned.

For specific court precedents and orders, please refer to the Ministry of Health, Labour and Welfare website, or the pamphlet mentioned below.

Matters to Consider in Mergers

The surviving company or new company incorporated after a merger comprehensively succeeds to labor contracts executed between the company disappearing due to the merger and its workers. For this reason, it is necessary to note that the working conditions stipulated in such labor contracts will be maintained as they are.

For the "Guidelines Concerning Assignment of Business, etc.," please refer to the Ministry of Health, Labour and Welfare (<http://www.mhlw.go.jp/>) website, or the "Overview of the Guidelines Concerning Matters to Be Taken into Account by Companies, etc. in Assignment of Business and Mergers" pamphlet.

If you have any questions, please contact the Employment and Environment Equality Division Office of the nearest Prefectural Labour Office.

For locations of the Prefectural Labour Bureau, please visit the following Ministry of Health, Labour and Welfare website. (<http://www.mhlw.go.jp/kouseiroudoushou/shozaiannai/roudoukyoku/>)