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.

Prior consultation with Labor Unions, etc.
Consultation should start before the start of consultation with workers subject to succession, and should be arbitrarily implemented thereafter as required.

Prior consultation with workers subject to succession
When holding consultations with workers subject to succession, plenty of time should be left to ensure sufficient consultation to obtain the consent of such workers on the basis of their true intention.

Consent of workers subject to succession to the assignee company’s succession to their labor contracts

Entry into force of the assignment of business and the succession to labor contracts

Ministry of Health, Labour and Welfare / Prefectural Labour Bureau
Matters to Consider in Assignment of Business

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.

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.

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 specific court precedents and orders, please refer to the Ministry of Health, Labour and Welfare website, or 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/)