



# Buying and selling a business

*When a business or part of a business is sold or transferred, both the buyer and seller have obligations to the employees.*

Selling or transferring a business or part of a business usually means there has been a transmission of business. Determining if there has been a transmission of business can be a complex legal decision and legal advice should be sought.

Both buyers and sellers may have obligations to employees when a transmission of business occurs. These obligations may vary depending on whether the employer is covered by the Western Australian industrial relations system or the national industrial relations system.

This information is for employers in the Western Australian industrial relations system. If you are unsure what system applies to your business, call Wageline for assistance.

## **Seller obligations**

An employee's contract of employment with the seller of the business is terminated when a transmission of business occurs. Termination entitlements are set out in relevant industrial legislation, awards and agreements. Call Wageline or visit the Labour Relations website [www.commerce.wa.gov.au/labourrelations](http://www.commerce.wa.gov.au/labourrelations) for information on Termination and Redundancy obligations.

In summary, the seller of the business must:

- give the correct amount of notice or pay in lieu, even if the person is employed by the buyer;
- inform employees of upcoming changes to the business;
- pay out accrued annual leave;
- if more than 15 employees are made redundant, notify Centrelink and consult with relevant unions; and
- make severance payments if the business has 15 or more employees, or if it is required by the relevant award/ agreement.

The seller may be exempt from making severance payments if the employee:

- accepts employment with the buyer that recognises continuous service; or
- declines a position with the buyer that has similar terms and conditions to the employee's previous position and that recognises the period of continuous service with the business.

## Buyer obligations

The buyer is not obligated to employ the staff of the previous owner but the buyer may choose to take on the seller's employees. Buyers need to check any relevant awards, agreements and legislation to understand the obligations they take on as the new employer. Typical obligations include:

- recognising accrued sick leave; and
- counting service with the previous employer towards the qualifying period for long service leave with the new employer.

For more detailed information about obligations under the award or agreement covering the workplace, call Wageline.

## Checklist

The checklist below will assist buyers and sellers in meeting their employment obligations:

Checklist	
Seller	Buyer
✓ Give correct amount of notice to employees.	✓ Decide if employing all or some of existing staff.
✓ Discuss changes with employees.	✓ If intending to employ the employees, tell the seller and employees before taking over the business.
✓ Pay out annual leave and other entitlements.	✓ Determine obligations relating to continuity of service and accrued entitlements that will be taken on by the buyer.
✓ Give severance pay to eligible employees.	✓ Determine conditions of employment that will apply to employees.
✓ If 15 or more redundancies, inform Centrelink and consult with relevant union.	✓ Advise new employees in writing of terms and conditions of employment, including any carried over entitlements to long service leave and other leave.
✓ Inform buyer of the award, agreement or contract currently in place.	✓ Factor in leave payments into terms of sale.
✓ Provide for future long service leave payments to buyer.	
✓ Inform buyer about continuous service for parental leave obligations.	

## Need more information? Call Wageline 1300 655 266

Open 8.30 am to 5.00 pm weekdays  
(except Wednesdays open 9.00 am to 5.00 pm).

## 'It always pays to call Wageline'

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