

LIFE AFTER SELLING YOUR BUSINESS



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For many business owners the ultimate goal is to one day sell their business and be able to enjoy the purchase price with no continuing obligations. However, frequently that sale price comes with strings attached; the new owners will often want you to become an employee or consultant of the company. This can be a difficult scenario. If this situation does come about, you should be thinking about the following:-

- What obligations will I have to the company?
- How does being an employee change my legal rights compared to owning the company?
- What happens if I don't like what the new owners do to my business?
- How do I interact with the staff - before I was their boss, now I am their colleague?
- How long does this arrangement continue for?

If you are confronted with this you should make sure that you have a clear written employment or consultancy contract before selling your business and you know exactly what role you are expected to take, going forward (this could possibly be documented by appending a job description into the employment or consultancy contract).

Continuing Obligations Owed

Following the sale of your business, you may feel that you have reached the pinnacle of your career and can start to take life a little bit easier. Whilst relinquishing control does mean that some of your regulatory obligations may cease (such as your duties and obligations as a director) there are some very important implications from an employment law perspective.

A failure to meet the new owners goals or ideas of "what good looks like" could result in you being held to be in breach of your employment contract, and you could find yourself being dismissed. It is therefore very important that you fully understand the terms of any post-sale working arrangements and ensure that you can comply with these.

Changes to Business Operations

There is no denying that the transition from business owner to employee will be different, and for some people, it will be impossible to let go and transition into this new arrangement. No longer are you building a business for yourself, now you are building a business for someone else.

They will undoubtedly have a different way of doing things and seek to place their mark on the business in

terms of strategy and also the culture of the business.

As an employee or consultant to your business you will be under an obligation to act upon the instructions / provide certain services at the request of the new business owners. Criticising or questioning the methods of the new business owners will not only undermine their authority with the other employees but also create a toxic atmosphere and thus hamper the business's value. It could also cause you considerable issues in terms of your continued engagement with your role in the business. A failure to comply with instructions or not to accept a new way of doing things, could be grounds to terminate your engagement thus resulting in you losing out on any further payments that you could have been entitled to from the sale. Consideration should be given prior to completion of the sale, whether this is something that you would be comfortable with. Many business owners, are by their nature, not comfortable in letting others take the reins and tell them what to do!

Change in Position

There are some major implications for business owners who subsequently become employees for the first time within their own business. These include:-

- The dramatic reduction in the minimum period of notice that their new employer has to provide them;
- Potentially not being entitled to redundancy payments (2 years continuous service being required to qualify for redundancy); and
- Potentially not being protected from being unfairly dismissed (52 weeks' continuous service is required before an employee obtains protection from unfair dismissal).

These scenarios typically arise when the previous business owner did not have an employment contract with the business prior to completing the sale and it is envisaged that they will only remain in the business for a temporary period.

These are vital considerations that should be at the forefront of every business owner's mind if it is a condition as part of a sale that they remain in the business in some capacity after completion.

Contact

This briefing only provides a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details above.