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## Law

### s.146(1) and (2)

When an employer sells, leases, transfers, or otherwise disposes of all or part of the employer's business either directly or indirectly to another person, the person is liable to pay all amounts owing under this Act by the employer immediately before the disposition.

Persons excluded from the provisions of this section are

- trustees in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada)
- court-appointed Receiver/Managers
- liquidators under the *Winding-Up Act* (Canada), and
- persons who acquire any or all of the employer's business according to arrangements made under the *Companies' Creditors Arrangement Act*(Canada).

### s.146(3)

The WSIB may enforce the obligation against the person as if the person was the employer at all relevant times.

## Policy

If the original employer has an amount owing to the WSIB as of the date of disposal, the WSIB holds the purchaser liable for any amounts owed by the original employer that relate to the business, or to the part of the business, being acquired as of the date of disposal.

The terms of this policy do not relieve the original employer of its financial obligations to the WSIB until either the original employer, the purchaser, or both pay all amounts owing.

Upon request, the WSIB issues a purchase certificate that waives a purchaser's liability with respect to disposal by an original employer whose account is in good standing.

Purchase certificates are not issued for

- changes in legal name due to Articles of Amendment
- trustees in bankruptcy under the *Bankruptcy and Insolvency Act*
- receivers or receiver managers
- liquidators under the *Winding-up Act*
- persons who acquire a business, or part thereof, pursuant to an arrangement under the *Company Creditors Arrangement Act*
- mergers/amalgamations\*
- share capital acquisitions where no assets are disposed\*.

### \*NOTE

Persons acquiring a business by way of mergers/amalgamations or share capital acquisitions are not purchasers for the purpose of this policy, as these persons acquire by law the liabilities of the seller.

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**NOTE**

S.146 does not apply when third parties exercise the legal remedies that are available to them to acquire an asset, e.g., when a third party exercises its right under a security agreement to realize on a security.

**Definitions**

**Purchase certificate** - A purchase certificate is a document issued by the WSIB, which relieves the purchaser of any obligation for the original employer's financial liability to the WSIB up to the date of disposal of the business.

**Original employer** - For the purpose of this policy, an original employer is one who has carried on, or is carrying on, a Schedule 1 or Schedule 2 business activity either on a compulsory basis or by application, and is selling, leasing, transferring or otherwise disposing of all or part of the assets of its business. Original employers include persons who do not employ workers, i.e., independent operators (and partners without workers) who have obtained optional insurance.

**Purchaser** - For the purposes of this policy, the purchaser is the person acquiring all or part of the assets of the business of the original employer. This definition includes, but is not limited to

- changes in legal status, e.g., a sole ownership becomes a partnership or incorporates
- a business that may not employ workers, or is not normally required to register with the WSIB, except that it has become indebted to the WSIB, by acquiring all or part of the assets of the business that had an amount owing to the WSIB at the time of the acquisition
- reincorporation of a limited company.

**Part of a business** - The WSIB defines part of a business as any part of the assets of the business such that the disposition of that part constitutes a material change in circumstances. For example, the disposition may affect the original employer's ability to fulfill its financial obligations to the WSIB.

These obligations include

- for Schedule 1 employers, payment of amounts owing and premiums due, and
- for Schedule 2 employers, reimbursement to the WSIB of current benefit costs or maintenance of a deposit sufficient to meet projected future costs of their claims.

It is the responsibility of the original employer to report any disposition of all or part of a business that constitutes a material change (see "Notification of disposal," below).

**Date of disposal** - For the purpose of this policy, date of disposal is the date of possession.

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## Accounts in good standing

The WSIB issues a purchase certificate for an original employer's account(s) if the following requirements are met. For Schedule 1 employers

- the original employer's declared business activities are classified in the proper classification units (see 14-01-02, Single Classification)
- the original employer has reported appropriate premiums based on actual or estimated earnings for all past reporting periods
- all outstanding reconciliation forms have been filed, and
- all amounts owing to the WSIB are paid at the time a purchase certificate is requested. In addition to premiums based on insurable earnings, these amounts include non-compliance interest and charges, experience rating surcharges, and Workwell surcharges.

For Schedule 2 employers there are no amounts owing for reimbursement of benefit costs or deposit requests.

## Waiving liability

By issuing a purchase certificate, the WSIB waives its right to hold the purchaser liable for any amounts charged to the account(s) of the original employer.

The certificate is valid for 30 days from the date of issue as printed on the certificate. For example, if a certificate is issued on April 1st and the disposal transaction between the original employer and the purchaser takes place on any day between April 1st and May 1st (inclusive), the WSIB waives its right to pursue the purchaser for any liability of the original employer.

If the transaction does not take place during the validity period of the certificate, another certificate may be requested.

## Multiple accounts

For original employers with multiple accounts, each account must be in good standing and a purchase certificate issued for each account in order to waive the liability of the purchaser.

## Purchaser liable

If the original employer has an amount owing to the WSIB and the purchaser does not have a valid purchase certificate as of the date of disposal, the purchaser is liable

- if all of the business is disposed, for all amounts owing to the WSIB that are related to the business, or
- if part of the business is disposed, for amounts owing to the WSIB that relate to the part of the business being disposed.

The amounts owing are calculated to the date of disposal.

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**Determining liability when part of business acquired**

If a purchaser becomes liable, when it acquires part of the business of the original employer, the purchaser must

- provide the WSIB with a description of the business/assets acquired, and
- provide proof, acceptable to the WSIB, of the value of the part of the business it has acquired in relation to the total value of the business at the time of acquisition.

If adequate proof is not provided, or if the calculation is inaccurate, the WSIB estimates the value of the part of the business acquired in relation to the total value of the business. The WSIB then pro-rates the liability of the original employer that was owing at the time of acquisition and charges the resulting amount to the purchaser.

When determining the value of a business, the WSIB takes into account the value of both the disposed and remaining assets, including

- goods, including inventory
- machinery and equipment
- buildings
- real estate
- motor vehicles
- contracts
- intangible assets (e.g., goodwill, trademarks, and patents).

**Terms and conditions**

The original employer and the purchaser, or their authorized representatives, may request certificates by phoning, writing, faxing, or visiting any WSIB office and providing

- the original employer's name and WSIB account number
- the purchaser's name and address, and
- the facsimile number or address for delivery of certificate.

**Authorization required for account status information**

The original employer must authorize the release of account status information before this information can be released to the purchaser, or its authorized representative.

**Verifying the certificate**

Purchasers presented with a purchase certificate which they suspect is not authentic or accurate should contact the WSIB.

For audit purposes, purchasers must retain a copy of any purchase certificate obtained. Similarly, both the purchaser and the original employer must retain any certificates issued directly to them by the WSIB.

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**Notification of disposal**

The original employer must notify the WSIB of the disposal of all or part of a business, as defined in this policy, within 10 days of the date of disposal (see 22-01-01, Material Change in Circumstances - Employer).

**Enforcement**

When enforcing the obligations of the purchaser in cases where no purchase certificate is issued, the WSIB pursues different remedies depending upon whether the person is

- a registered Schedule 1 employer
- a registered Schedule 2 employer, or
- not registered with the WSIB.

**Purchase Certificates while an issue is under appeal**

The WSIB will not action any requests for a purchase certificate while the original employer's account has an issue under appeal. The appeal process needs to be completed prior to the issuance of a purchase certificate.

**Application date**

This policy applies to all decisions made on or after April 7, 2008.

**Document History**

This document replaces 14-02-03 dated October 12, 2004.

**References****Legislative Authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 12, 77, 146

**Minute**

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