
Law

s.139(1)

If a person does not pay amounts owing under this Act when they become due, the WSIB may issue a certificate stating that the person is in default under this Act and setting out the amount owed and the person to whom it is owed.

s.139(2)

The WSIB may file the certificate with the Ontario Court (General Division) or with the Small Claims Court and it shall be entered in the same way as an order of that court and is enforceable as such. Despite any other rule of the court, the WSIB may file the certificate by mail and personal attendance at the court is not required.

s.145(1)

The amount set out in a certificate filed with the court under subsection 139(2) is, after municipal taxes, a first lien upon all of the property of the employer used in connection with the industry with respect to which the employer is required to make payments under the insurance plan, subject to subsection 145(2).

s.145(2)

The lien is effective only if

- a) notice of the lien is filed by way of writ of seizure and sale in the office of the sheriff for the area in which the affected property is situated,
and
- b) a copy of the writ is delivered by the sheriff or by registered mail to the proper land registrar, if affected land is registered under the *Land Titles Act*.

Policy

If an employer has an overdue balance, the WSIB may file a s.139 certificate with the court against the employer for the full debt owing to the WSIB.

At the same time and in almost all cases, to establish a first lien, the WSIB immediately files a writ of seizure and sale in all jurisdictions that contain property of the employer used in connection with the employer's business activity.

Guidelines

Definition

For the purpose of this policy, a "person" under s.139 of the Act means an employer who has carried on, or is still carrying on, a business activity under Schedule 1 or Schedule 2, either on a compulsory basis or by application. Employers include persons who do not employ

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workers, i.e., independent operators (and partners without workers) who have obtained optional insurance.

Reasons for filing a s.139 certificate

The WSIB takes the legal action outlined in this policy against an employer with an overdue balance when

- the WSIB believes the employer can pay the amount owing but refuses to do so
- a phased payment plan with the employer is not negotiated within 60 days of an account becoming overdue
- the employer defaults on a phased payment plan
- the employer is disposing of assets or selling the business, and the WSIB suspects an attempt to evade collection
- the employer is not co-operating, or is unresponsive when the WSIB tries to make contact.

Enforcing the certificate

Once the WSIB has filed a s.139 certificate with the court stating that the employer owes the overdue balance to the WSIB, the certificate is enforceable as an order of the court.

After filing the writ of seizure and sale to establish the first lien, the WSIB may enforce the certificate by directing the sheriff to execute the writ and seize the employer's assets.

Other methods of enforcing the certificate include garnishment and obtaining a court-appointed Receiver/Manager.

Renewing and withdrawing writs

The WSIB renews a writ automatically on the expiry date, and only withdraws the writ once the debt is paid.

Temporary cessation

The WSIB may temporarily cease enforcement proceedings, e.g., by lifting a writ, to allow an employer to complete specific transactions if an arrangement is made to settle the debt.

Enforcement during appeal

The employer's debt remains subject at all times to enforcement action. For example, if an employer appeals an amount owing, the WSIB may still initiate enforcement proceedings while the issue is under appeal. An employer may request to post an irrevocable letter of credit (LC) for the amount under appeal to suspend collection activity. In these situations, the WSIB does not file a s. 139 certificate with the court providing the employer's account remains paid up to date. For more information see OPM 14-04-05, Alternative Payment Arrangement.

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Application date

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

Document History

This document replaces 14-04-03 dated October 12, 2004.

References

Legislative Authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 139(1), 139(2), 145(1), 145(2)

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