

Client Services Procedure Manual

Procedure: 603.00
Subject: Change of Ownership

603.01 Introduction

This procedure explains the conditions that are considered by WorkplaceNL in determining when an entity or person is a successor of the employer under Section 113 of the Workplace Health, Safety and Compensation Act (the Act). Under Section 113, entities or persons purchasing or taking over an existing business, or part of an existing business, may be held responsible for any unpaid balances associated with this business. The original business may have been sold, leased, transferred, disposed of, undergone a change in ownership, re-incorporated, restructured or altered in some other way.

603.02 Factors for Consideration

Determination of successorship is a two stage process which involves:

1. Identifying the nature of the predecessor company's business and the assets used; and
2. Determining continuity of business by the successor.

In order for WorkplaceNL to determine successorship, the new business owner must provide answers to the following questions, along with supporting source documentation. The evidence surrounding each factor will be considered, and the cumulative impact of all factors will determine the decision of successorship or independence of the new operation.

Logo or Trademark

What, if anything passed on to the successor, would identify with the predecessor?

Customer List

What similarities exist between the customer lists of the predecessor and the successor?

Accounts Receivable, Existing Contracts and Inventory

Were there accounts receivable, existing contracts or inventory which would accrue to the successor?
If so, what are they?

Agreement to Maintain a Good Name or to not compete

If such an agreement exists, what are the terms of the agreement with the predecessor to maintain a good name or not to compete?

Same Employees / Same or Similar Work

Does the successor employ all or most of the same employees as the predecessor? Does the successor perform the same or similar services and/or provide the same or similar goods?

Break in Production/Service

If there was a break in production, how long was it? What are the circumstances surrounding the break in production?

Service to Former Customers

Does the successor serve the same customers as the predecessor?

Direct Contact between the Predecessor and the Successor

How was the business sold or transferred to the new owner? Was there direct contact between the two parties, whereby the business was sold in whole as it operated prior to the transfer? Was the business sold through an external third party, and was it sold in whole or piecemeal?

Arm's Length Relationship between the Predecessor and Successor Employer

Did the predecessor and successor deal with each other at arm's length?

Asset/Machinery Sale

What assets or parts of the assets (sufficient to enable the successor to perform discrete, definable parts of the functions formerly performed by the predecessor) have been sold?

Movement of Principal(s)/Management Personnel

What common management personnel/principals exist, if any, between the successor and predecessor operations?

Operating Status of the Predecessor Business

Is the predecessor business still operational?

Successorship in the Labour Context

If the workplace is unionized; is the new business a successor business with respect to adherence to prior labour relations agreements, terms and conditions? If the workplace is non-unionized, has the employee's employment been determined to be continuous under the Labour Standards Act?

603.03 Successorship Decision

When adequate documentation is not provided, WorkplaceNL will issue a letter to the successor employer indicating the amount outstanding on the predecessor employers' account. The letter will indicate that WorkplaceNL believes a predecessor/successor relationship exists between the two employers. The successor is given 15 days from the date of the letter to provide evidence to dispute the decision. If no documentation is received within the 15 day period, the balance will be transferred from the predecessor employer to the successor employer.

WorkplaceNL renders a decision to the successor employer which indicates the amount outstanding on the predecessor employers' account.

If the employer disagrees with the decision, the employer may seek a review of the decision, subject to WorkplaceNL's internal review process. The internal review process is outlined in Policy AP-01, Internal Review. Policy AP-01 and the Request for Internal Review form are available on WorkplaceNL's website at workplacnl.ca.

Reference: Workplace Health, Safety and Compensation Act, Section 113
Policy AP-01, Internal Review

Amendment History

Original Effective Date 2018 09 11