

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

Policy Statement

A Clearance issued by the WorkplaceNL states that an employer is in good standing and has met the reporting and payment requirements of the Act to date. By issuing a Clearance with respect to an employer, WorkplaceNL waives its right to hold the principal liable in the case of contract work or to lien the property in the case of a transfer of assets. In the case of financing transactions, by issuing a Clearance, WorkplaceNL waives its priority to the holder of the security interest for that transaction.

Persons who wish to protect themselves from liability under sections 118.1, 118.2, 120, 121 and 122 of the Act can request a Clearance from WorkplaceNL and WorkplaceNL will advise them of the account status of an employer as per sections 18, 18.1 and 18.2 of the Act.

For online requests, where the employer has more than one account, a request must be made on each account to ensure there is no liability or lien on the assets of that employer.

The purpose of this policy is to facilitate business transactions and provide a method of protection to the other parties involved in those business transactions. The terms of this policy do not relieve the employer of his/her reporting and financial obligations under the Act until all amounts reported have been confirmed by WorkplaceNL and all amounts owing have been paid in full on all their accounts.

General

Clearances may be requested by contacting WorkplaceNL for a Clearance letter, or by using the **connect** online system to request a Clearance letter or maintain a subcontractor status list which will provide updates on each subcontractor's Clearance status.

There are two different types of requests for Clearance as defined below.

Part I – Contract work

For the purpose of this policy, “principal” refers to an employer who contracts for work with another employer; and, where a contractor in turn contracts with a subcontractor, as between the contractor and the subcontractor, the contractor is considered to be the principal and the subcontractor the contractor.

This part applies to all employers registered under the Act who

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

enter into contracts for the purpose of carrying on a business activity. It does not apply, for example, to householders who purchase services from a contractor.

To avoid liability for the unpaid assessment of its contractor and/or subcontractor and a lien attaching to their assets for unpaid assessments, the principal should request a Clearance on the contractor and/or subcontractor.

This type of request may also come from the contractor or subcontractor requesting that WorkplaceNL provide a Clearance to the principal.

A Clearance letter request may be made online by a registered web user, or by phone, fax, in writing or in person to any WorkplaceNL office and must include:

1. Principal's name, address and firm number (if available);
2. Contractor's or subcontractor's name, address and firm number (if available);
3. E-mail address, facsimile number or address for delivery of Clearance; and,
4. Optional reference information needed by the principal to identify the contract.

A Clearance can also be obtained by using the **connect** online system to obtain a subcontractor status. The system will monitor the subcontractor and automatically notify the user if the subcontractor is no longer in good standing.

To issue a Clearance, WorkplaceNL must be satisfied that the employer has met all of the following requirements for each of their accounts:

1. Has an active account with payroll for the current year;
2. The current year's payroll estimate is reasonable based on the employer's prior history;
3. The employer has submitted the required Employer's Payroll Statements for all prior periods; and,
4. The account has been paid in full or is being paid in accordance with an existing Deferred Payment Arrangement under policy ES-04 "Deferred Payment of Assessments".

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

If these conditions are not met, WorkplaceNL will advise the person making the request that the employer is not in good standing. WorkplaceNL can then hold the principal liable for any unpaid assessments related to the contract. In these cases, the principal can withhold from the contractor an amount that WorkplaceNL estimates they could become liable for based on the details of the specific contract.

Period of Validity for Contract Work

Clearance is valid only for work performed in the current year. A Clearance letter is valid either for 45 days from the date of issue, or in cases where optional personal coverage is in place, for the period specified in the Clearance letter. A subcontractor status is valid until the **connect** user is notified that the subcontractor is not in good standing. If the transaction does not take place during the validity period of the Clearance, another Clearance must be requested.

If a Clearance letter is required for a previous year, then a request must be made by phone, fax, in writing or in person to any WorkplaceNL office as these requests cannot be processed on the web. The period of validity will be stated in the Clearance letter.

Principal Protection

Principals are encouraged to request a Clearance at the beginning of a contract and at the end of the contract before the final payment is released. If presented with a Clearance by the contractor or subcontractor which the principal may suspect is not authentic or accurate, he/she should contact WorkplaceNL for verification of validity.

Where WorkplaceNL is made aware of potential misrepresentation by any party in the use of a Clearance, it will make the necessary inquiries and give the party an opportunity to respond. Depending on the circumstances, the case may be referred for criminal prosecution.

Waiving Liability

By issuing a Clearance, WorkplaceNL waives its right to hold a principal liable for assessments charged to the

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

contractor/subcontractor's account which may fall due during the time the Clearance is valid and waives its lien on the assets of the principal.

Part II – Legal Transactions

A request for a Clearance letter may be made by legal counsel for one of the parties involved in a legal transaction.

A Clearance letter request may be made online by a registered web user, or by phone, fax, in writing or in person to any WorkplaceNL office and must include:

1. Name of legal counsel, name of law firm and firm number. If the request is not made on the web, they must also provide the facsimile number or address for delivery of account status;
2. Employer's name, address and firm number (if available);
3. State if legal transaction is for "Financing" or "Change in Ownership of Assets" or "Sale of a Business"; and,
4. Optional reference information needed by the law firm.

WorkplaceNL may request additional information from the legal counsel if the employer is not registered with WorkplaceNL, or in the case of a request concerning a director under Policy ES-15 "Directors' Liability", in order to process the request.

Clearance will not be issued for:

1. Changes in legal name due to Articles of Amendment;
2. Trustees in bankruptcy under the Bankruptcy and Insolvency Act;
3. Receivers or receiver managers;
4. Liquidators under the Winding-up and Restructuring Act;
5. Mergers/amalgamations*; and,
6. 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 (original employer).

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

Confirmation of Receipt of Request

WorkplaceNL will confirm the receipt of an online request within one business day after receiving the request. This confirmation will be an electronic notice to the person who made the request with a unique request identification number.

WorkplaceNL will confirm the receipt of a request by fax, mail or phone, within two business days after receiving the request. The confirmation will be issued to the delivery method provided in the request with a unique request identification number.

Within 21 days of the issuance of the notice of confirmation, WorkplaceNL will provide the legal counsel with the account status which will be either:

1. a Clearance if the account is in good standing, or
2. a notification of the balance outstanding on the account. The full balance outstanding must be paid by the law firm in order for Legal Counsel to obtain a Clearance.

Period of Validity for Legal Transaction Requests

An account status given by WorkplaceNL in response to a legal counsel request shall be valid for 45 days from the date that the account status was provided. If the transaction does not take place during the validity period of the Clearance, another Clearance must be requested. Electronic information given by WorkplaceNL in response to a legal counsel request shall be considered to be provided to legal counsel when it enters an information system outside the control of WorkplaceNL.

Waiving Liability or Lien

By issuing a Clearance for “Change of Ownership” or “Sale of a Business” transactions, WorkplaceNL waives its lien on the assets transferred to the purchaser in that transaction. By issuing a Clearance for “Financing” transactions, WorkplaceNL waives its priority to the security holder of the security interest for that transaction. If a Clearance is not available because the employer is not in good standing, then WorkplaceNL has a lien on the assets involved in the legal transaction.

Client Services Policy Manual

Policy Number: **ES-16**
Subject: **Clearance**
Chapter: **Employer Services**

Where WorkplaceNL does not provide the account status for a legal counsel request within 21 days after the issuance of the notice of confirmation of that request and a transaction for which that request was made is completed after that 21 day period but before WorkplaceNL provides the account status, assets included in that transaction only shall be considered to be free and clear of any lien imposed under the Act and a security interest included in that transaction only shall have priority over a lien imposed under the Act.

Exceptional Circumstances

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting.

Reference: Workplace Health, Safety and Compensation Act (the Act), Sections 18, 18.1, 18.2, 118.1, 118.2, and 120-122
Bankruptcy and Insolvency Act (Canada)
Winding up and Restructuring Act (Canada)
Policies: ES-04 Deferred Payment of Assessment
ES-15 Directors' Liability

Amendment History

Original Effective Date	2006 04 01
Revision #1	2010 08 09
Revision #2	2012 02 08