

4123-17-02 Successorship.

(A) Responsibilities.

- (1) Whenever one employer succeeds another employer in the operation of a business in whole or in part, the successor shall notify the bureau of the succession.
- (2) Pursuant to this rule, the bureau shall provide to the parties to the transfer of experience the necessary forms and instructions to complete the transfer of the appropriate payrolls and claims. The bureau shall review the transfer and if any questions arise, the bureau may conduct a premium audit on each party's risk account.
- (3) The successor must preserve the predecessor's payroll records for the five years preceding the date of succession.

(B) Experience.

- (1) Where one legal entity, not having coverage in the most recent experience period, wholly succeeds another legal entity in the operation of a business, the successor's rate shall be based on the predecessor's experience within the most recent experience period.
- (2) Where a legal entity having an established coverage or having had experience in the most recent experience period wholly succeeds one or more legal entities having established coverage or having had experience in the most recent experience period and at least one of the entities involved has a merit rating experience, the experience of all the involved entities shall be combined to establish the rate of the successor.
- (3) Where a legal entity succeeds in the operation of a portion of a business of one or more legal entities having an established coverage or having had experience in the most recent experience period, the successor's rate shall be based on the predecessor's experience within the most recent experience period, pertaining to the portion of the business acquired by the successor.
- (4) When any combination or transfer of experience is indicated under any of the provisions of this rule, the effective date of such combination or transfer shall be the beginning date of the following policy year. In cases where an entity institutes workers' compensation coverage on the same date it wholly succeeds another entity or in cases where the date of succession is determined to be the first date of the policy year, the experience of the predecessor shall be transferred to the successor effective as of the actual date of succession.
- (5) For an out of state employer purchasing an existing Ohio operation, the bureau may use the out of state experience of the employer as a factor in determining the employer's experience.
- (6) In addition to paragraphs (B)(1) to (B)(5) of this rule, and regardless of whether the predecessor's transfer to the successor was voluntary or through an intermediary bank or receivership, the bureau shall transfer the predecessor's experience under the workers' compensation law to the successor if any of the following criteria are met:
 - (a) The successor expressly or impliedly agrees to assume such obligations;
 - (b) The succession transaction amounts to a de facto consolidation or merger;
 - (c) The successor is merely a continuation of the predecessor; or

(d) The succession transaction is entered into for the purpose of escaping obligations under the workers' compensation law.

(7) If all of the following conditions are met, the bureau will not transfer the experience from the predecessor to the successor:

(a) There is a material change in ownership;

(b) There is a change in governing classification; and

(c) There is a change in process and hazard.

(8) In addition to paragraph (B)(7) of this rule, the bureau will not transfer the experience from the predecessor to the successor if both of the following are met:

(a) The time between the predecessor ceasing all operations and the effective date of purchase is greater than six months; and

(b) There is no family relationship or other connection between the predecessor and the successor.

(C) Rights and obligations.

(1) Where one employer wholly succeeds another in the operation of a business, the bureau shall transfer the predecessor's rights and obligations under the workers' compensation law to the successor.

(2) In addition to paragraph (C)(1) of this rule and regardless of whether the predecessor's transfer to the successor was voluntary or through an intermediary bank or receivership, the bureau shall transfer the predecessor's rights and obligations under the workers' compensation law to the successor if any of the following criteria are met:

(a) The successor expressly or impliedly agrees to assume such obligations;

(b) The succession transaction amounts to a de facto consolidation or merger;

(c) The successor is merely a continuation of the predecessor; or

(d) The succession transaction is entered into for the purpose of escaping obligations under the workers' compensation law.

(3) If all the following conditions are met, the bureau will not transfer the predecessor's rights and obligations to the successor:

(a) There is a material change in ownership;

(b) There is a change in governing classification; and

(c) There is a change in process and hazard.

(4) In addition to paragraph (C)(3) of this rule, the bureau will not transfer the predecessor's rights and obligations to the successor if both of the following are met:

(a) The time between the predecessor ceasing all operations and the effective date of purchase is greater than six months; and

(b) There is no family relationship or other connection between the predecessor and the successor.

(5) The successor shall be credited with any credits of the predecessor available at the time the bureau completes the transfer. This paragraph shall apply where an employer wholly succeeds another employer in the operation of a business on or after September 1, 2006.

(D) Risk Coverage Transfer.

(1) No retroactive coverage may be granted except as provided in rule 4123-14-03 of the Administrative Code.

(2) A legal entity may be assigned only one risk. Where a legal entity succeeds one or more risks, it shall be assigned a single risk designation.

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