

## WISCONSIN UNEMPLOYMENT INSURANCE ACT

### Section 108.16(8) of the Wisconsin Statutes, Provisions Relating to Transfers of Business

- (a) For purposes of this subsection a business is deemed transferred if any asset or any activity of an employer, whether organized or carried on for profit, nonprofit or governmental purposes, is transferred in whole or in part by any means, other than in the ordinary course of business.
- (b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions have been satisfied:
  - 1. The transferee has continued or resumed the business of the transferor, in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those employed by the transferor in connection with the business transferred.
  - 2. The transfer included at least 25% of the transferor's total business as measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding the date of transfer.
  - 3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of transfer.
  - 4. The department has received a written application from the transferee requesting that it be deemed a successor. Unless the transferee satisfies the department that the application was late as a result of excusable neglect, the application must be received by the department on or before the contribution payment due date for the first full quarter following the date of transfer. The department shall not accept a late application under this subdivision more than 90 days after its due date.
- (c) Notwithstanding par. (b), if the business of an employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:
  - 1. The transferee is a legal representative or trustee in bankruptcy or receiver or trustee of a person, partnership, limited liability company, association or corporation, or guardian of the estate of a person, or legal representative of a deceased person.
  - 2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employees as those the transferor had employed in connection with the business transferred.
  - 3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of transfer.
- (cm) The filing of a voluntary petition in bankruptcy by an employer or the filing of an involuntary petition in bankruptcy against an employer under 11 USC 1101 to 1330 or the confirmation of a plan under 11 USC 1101 to 1330 does not render the employer filing the petition or against whom the petition is filed a successor under par. (c).
- (d) Notwithstanding par. (b), if the business of an employer of a kind specified in par. (c) 1 is transferred, the transferee is deemed a successor for purposes of this chapter if the transferee would have been a successor under par. (e) but for the intervening existence of the successor employer under par. (c).
- (e) Notwithstanding par. (b), a transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions are satisfied:
  - 1. At the time of business transfer, the transferor and the transferee are owned, managed or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the "same interest or interests" includes the spouse, child or parent of the individual who owned, managed or controlled the business, or any combination of more than one of them.
  - 2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those the transferor had employed in connection with the business transferred.
  - 3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of transfer.
- (em) If, after the transferee of a business has been deemed a successor under par. (e), the department determines that a substantial purpose of the transfer of the business was to obtain a reduced contribution rate, then the department shall treat the transfer as having no effect for purposes of this chapter and shall, retroactively to the date of the transfer, reassign to the transferor all aspects of the transferor's account experience and liability that had been assigned to the transferee, together with all aspects of the transferee's account experience related to the transferred business, and shall recompute the transferor's contribution rate as provided in par. (h).

- (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.
- (g) If not already subject to this chapter, a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date, using the contribution rate assigned or assignable to the transferor on the date of transfer.
- (h) The department shall redetermine the contribution rate of a successor that is subject to this chapter immediately prior to the effective date of a transfer as of the applicable computation date effective for contributions payable beginning in the first calendar year following the date of the transfer of the business. The department shall thereafter redetermine the contribution rate whenever required by s.108.18. For the purposes of s.108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.
- (i) The account taken over by the successor shall remain liable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment is deemed employment performed for the successor.
- (im) Notwithstanding pars. (b) to (i), a transferee who is not subject to this chapter on the date of transfer of a business shall not be deemed a successor to the transferor if the department determines that the transfer occurred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply if the transferee were deemed a new employer. In determining whether a business was transferred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply, the department shall use objective factors, which may include the cost of acquiring the business, whether the transferee continued the business enterprise of the transferred business, the length of time that the business enterprise was continued, or whether a substantial number of new employees were hired for the performance of duties unrelated to the business activity conducted by the transferor prior to the transfer.
- (j) If not already subject to this chapter, a transferee that is not a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date.
- (k) Any time a business is transferred, as provided in par. (a), both the transferor and the transferee shall notify the department in writing of the transfer, within 30 days after the date of transfer; and both shall promptly submit to the department in writing such information as the department may request relating to the transfer.
- (l) A professional employer organization is not considered to be the successor to the employer account of its client under this section by virtue of engaging the prior employees of the client to perform services for the client under an employee leasing agreement.
- (m) If any person knowingly makes or attempts to make a false statement or representation to the department in connection with any investigation to determine whether an employer qualifies to be deemed a successor under par. (e) or (im) or any other provision of this chapter for the purpose of determining the assignment of a contribution rate, or if any person knowingly advises another person to do so, including by willful evasion, nondisclosure, or misrepresentation, the person is subject to the following penalties:
1. If the person is an employer, then the department shall assign the employer the highest contribution rate assignable under this chapter for the year, during which the violation or attempted violation occurs and the 3 succeeding years, except that if the department assigns the employer the highest contribution rate for any such year under other provisions of this chapter or if the increase in the employer's contribution rate under this subdivision would be less than 2 percent on its payroll for any year, then the department shall increase the employer's contribution rate by 2 percent on its payroll for each year in which a penalty applies under this subdivision.
  2. If the person is not an employer, the person may be required to forfeit not more than \$5,000.
  3. The person is guilty of a Class A misdemeanor
- (n) The department shall utilize uniform procedures to identify businesses that are transferred under this subsection.
- (o) Paragraphs (e)1., (em), (h), (im), and (m) shall be interpreted and applied, insofar as possible, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.