

Business Buyers Beware! Workers' Compensation Successorship Rule is Changing

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In April 2006, the Ohio Bureau of Workers' Compensation ("BWC") amended its rule concerning successor liability. The BWC amended this rule as a way to recover lost revenue after business transfers occur. Up to this point, the BWC was generally unsuccessful in assessing a predecessor's outstanding obligations-like premiums in default, retrospective rating obligations, non compliance claims billings, and VSSR (Violation of Specific Safety Requirements) penalties-against an employer's successor, absent an agreement between the predecessor and successor. The amended rule will give the BWC the ability to assess financial responsibility on many business successors after September 1, 2006.

The amended rule will permit the BWC to transfer all of a predecessor's rights and obligations under the workers' compensation law to its successor whenever the successor wholly succeeds the predecessor. The amended rule makes it more likely that the BWC will be paid all of the predecessor's debts and unpaid obligations in most business reorganizations and in many asset sales. Previously, the transfer of a predecessor's risk account and financial liabilities became effective only upon the written agreement of the predecessor and successor.

With the new rule, all successors must inform BWC of their succession. Employers wholly succeeding a predecessor become obligated to pay the predecessor's obligations as a matter of law. Predecessors that do not transfer all of their operations retain their financial obligations to the BWC. Unlike the rules concerning successorship for unemployment compensation, the BWC's rules are not detailed, and we will have to wait to see how the BWC determines the breadth of the term "wholly succeeding."

Because this is a significant departure from previous practice, business purchasers should thoroughly investigate the workers' compensation liabilities of the business being purchased. The purchase documents should contemplate that the seller's final premium payment and perhaps other payments will not be due until after the transfer takes effect.

If you have any questions regarding the amended rule, or about its impact on your business, please contact Joseph N. Gross at 216.363.4163 or jgross@bfca.com. You can review the rule at: http://www.registerofohio.state.oh.us/pdfs/4123/0/17/4123-17-02_PH_FF_A_RU_20060717_1210.pdf.