

**871—23.28(96) Successor.**

**23.28(1)** “Successor employer” means an employing unit that:

*a.* Acquired, and continues to operate, the organization, trade or business, or substantially all the assets of an employing unit that were subject to the provisions of Iowa Code chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition.

*b.* Acquired a severable portion of the business of an employer who is subject to Iowa Code chapter 96 if:

(1) The portion of the business or enterprise acquired would have qualified as an “employer” pursuant to Iowa Code section 96.1A(14) “*a.*”

(2) A request for a transfer of experience of the severable portion was made within 90 days of the transfer date.

(3) The transfer request contains information required by the department and is approved by both the predecessor and department.

**23.28(2)** An “organization,” “trade” or “business” as used in Iowa Code section 96.1A(14) “*b.*” is acquired if an employing unit acquires factors of an employer’s organization, trade or business sufficient to constitute an entire existing going business unit, not merely assets from which a new business may be built. Acquisition is determined by examining all of the factors of the transfer, including:

*a.* Place of business.

*b.* Employees.

*c.* Customers.

*d.* Good will.

*e.* Trade name.

*f.* Stock in trade.

*g.* Tools and fixtures.

*h.* Other assets.

**23.28(3)** As used in Iowa Code section 96.1A(14) “*b.*,” “substantially all of the assets” means substantially all of the assets of any employer that generate substantially all of the employment, except those retained for liquidation.

**23.28(4)** A “segregable and identifiable part” of enterprise as used in Iowa Code section 96.7(3) “*b.*” is acquired if an employing unit acquires factors of an existing organization, trade or business sufficient to constitute an existing separable going business unit, not merely assets from which a new business may be built. Acquisition of a distinct and severable portion is determined by examining all the factors, including:

*a.* Place of business.

*b.* Employees.

*c.* Customers.

*d.* Good will.

*e.* Trade name.

*f.* Stock in trade.

*g.* Accounts receivable.

*h.* Tools and fixtures.

**23.28(5)** “Successor liability” as used in Iowa Code chapter 96 and these rules occurs for the acquiring employing unit when there is a transfer of assets necessary to the continued operation of the employing unit from the predecessor to the successor and the successor continues to operate the business as though there has been no change in ownership or control.

**23.28(6)** Successor liability will be found to occur if an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer’s lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer’s experience.

**23.28(7)** The department will utilize the following general criteria when establishing successorship in specialized cases:

*a.* Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit's experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer's experience.

*b.* Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

*c.* A franchise agreement will be treated the same as a lease agreement.

*d.* If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

*e.* If a covered employer is forced out of business through foreclosure proceedings, there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3) "b," 96.8 and 96.1A(14) "b."

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