



# When purchasing all or part of a business, ask the seller for six things to protect yourself

*When you buy an existing or a portion of a business, you are also buying the workers' compensation claim liabilities of that business.<sup>1</sup> The new business owner inherits the claim responsibilities and the risk of increased premium rates.*

## How to protect yourself

Before buying the business, it is important to uncover potential hidden future expenses like workers' compensation claim liabilities. You should also ask to review workplace safety and health records. These records are not usually disclosed in financial documents. You may uncover "hidden" liabilities.

Ask the seller to request the following items from Labor & Industries (L&I) Employer Services at 360-902-4817. *L&I can only disclose this information to the current business owner, and not to a potential buyer directly.*

1. **Injury and Cost Profile:** This one-page report covers a five-year history of workers' compensation and injury data for a business, including:
  - Premiums which may include savings from a Claim-Free Discount or higher rates due to time-loss or disability claims.
  - Total number of claims per year.
  - Experience factor — learn more at [www.Lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/experience-rating](http://www.Lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/experience-rating) or watch "Rate Setting 101" at [www.Lni.wa.gov/ControlMyRates](http://www.Lni.wa.gov/ControlMyRates).

- Claim-Free Discount — learn more at [www.Lni.wa.gov/ClaimFreeDiscount](http://www.Lni.wa.gov/ClaimFreeDiscount).
  - Top five types of injuries specific to the industry and injury types incurred by the business.
2. **Injury Report<sup>2</sup>:** This report lists various claim expenses incurred by the business. Categories include medical, time-loss, partial permanent disability, pension and more.
  3. **Estimated Future Rate Projection:** This information projects a future experience factor and premium expenses should the business data remain unchanged.
  4. **Safety and Health Consultation Report:** Workplace safety culture is an intangible asset or risk a buyer inherits. Employers can voluntarily schedule a no fee, safety and health consultation that includes a walk-through to evaluate each workplace for hazards and an evaluation of the Accident Prevention Program (APP) required for every business. Reference this and other safety resources at [www.Lni.wa.gov/safety-health](http://www.Lni.wa.gov/safety-health). Consultations are confidential. While no fines or penalties will be imposed, you will be required to correct any serious hazards found. Ask the seller if this report is available for review. Find out more at [www.Lni.wa.gov/DOSHConsultation](http://www.Lni.wa.gov/DOSHConsultation).

**5. Risk Management Consultation:** This no-fee service provides a review of the business’s injury history and a step-by-step plan including best practices to help control costs. If the potential buyer plans to proceed with the purchase, a risk management consultation is an excellent mitigation step. Find out more at [www.Lni.wa.gov/DOSHConsultation](http://www.Lni.wa.gov/DOSHConsultation).

**6. Recordkeeping and Reporting of Worker Injuries (OSHA 300 Log):** Employers with 11 or more employees, and those in certain industries, are required to record workplace injuries and illnesses. Prior to purchase, buyers are encouraged to review the OSHA 300A Summary to learn the business’ work-related injuries or illnesses<sup>3</sup>. Learn more: [www.Lni.wa.gov/Safety/Topics/AToZ/RecordkeepingReporting/OSHA300DecisionTree.asp](http://www.Lni.wa.gov/Safety/Topics/AToZ/RecordkeepingReporting/OSHA300DecisionTree.asp).

## Partial business purchases

Buyers can inherit the seller’s workers’ compensation liabilities even in a partial business purchase. For example, the buyer will likely assume the claim liability if the purchase involves just a few items such as a customer list, inventory, or other partial assets.

Sales contracts and other purchase documents are often used by Labor & Industries to determine if the seller’s workers’ compensation history (experience factor) should be passed to the new purchaser per WAC 296-17-873.<sup>4</sup>

1. RCW 51.16.090 Continuity of cost experience.

To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience.

2. WAC 296-17-873 Responsibility for past experience.

WAC 296-17-87301 through 296-17-87306 shall be used to determine the assignment of past loss experience associated with a change in business ownership for experience rating purposes. . . . When a business or portion of a business is sold, the new owner or owners of such business or portion thereof shall also take over the past loss experience associated with the business unless another treatment is specified in these rules.

3. WAC 296-27-02109 Change in business ownership.

If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which you owned the establishment. You must transfer these records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by WAC 296-27-02107, but need not update or correct the records of the prior owner.

4. This report lists all claims incurred by the business without disclosing identifiable information such as injured worker’s name or the claim number.



## Example of potential impact to buyer

To understand workers’ compensation rates better, remember that:

1. The risk class reflects the overall loss history of each industry.
2. The experience factor reflects the loss history of the business.
3. A claim affects a business’s experience factor for three years, but your rate will not be affected for two to three years after the injury date.
4. An experience factor above 1.0 means more claim liability than average for that industry. An experience factor below 1.0 means less claim liability than average for that industry.

Assuming 10 full-time employees working 480 hours per quarter, below is an example of how various experience factors could affect the annual premium paid.

| Industry Type   | Risk Class Base Rate | 1.0 Exp. Factor | 0.9 Exp. Factor | 2.0 Exp. Factor |
|-----------------|----------------------|-----------------|-----------------|-----------------|
| Clerical office | 0.1576               | \$3,026         | \$2,723         | \$6,052         |
| Roofing work    | 5.9600               | \$114,432       | \$102,989       | \$228,864       |