

Practice Directive 1-38-1 (A)

Section 38 Registration of an Employer on the Initiative of the Board

Effective March 1, 2003

Reference *Workers Compensation Act*¹ (the “Act”) section 38:

- (1) Every employer must
 - (a) keep at all times at some place in the Province, the location of which the employer has given notice to the Board, complete and accurate particulars of the employer’s payrolls;
 - (b) cause to be furnished to the Board
 - (i) when the employer becomes an employer within the scope of this Part; and,
 - (ii) at other times as required by a regulation of the Board of general application or an order of the Board limited to a specific employer,

an estimate of the probable amount of the payroll of each of the employer’s industries within the scope of this Part, together with any further information required by the Board; and
 - (c) furnish certified copies of reports of the employer’s payrolls, at or after the close of each calendar year and at the other times and in the manner required by the Board.
- (2) Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the Board, and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

Practice

INTRODUCTION

All employers, unless exempted by the Board, are required to register with the Board; and, if circumstances so require, the Board must effect such registration on its own initiative. Although registration with the Board does not impart or confer any new legal or financial obligation on the

¹ R.S.B.C. 1996 chapter 492.

employer,² it is incumbent on the Board to ensure that an employer is notified of its impending registration with the Board, if practicable.

If a Board officer³ has reason to suspect or believe that an employer required to be registered under the *Act* is not so registered, the Board officer must determine whether the employer is required to be registered; and, if so required, must register that employer. In so doing, the Board officer must use all reasonable means to obtain the following minimum requisite information for registration:

- the employer's legal status,
- contact information (including firm owner, address, and phone number), and
- the industry in which the employer is operating.

All pre-registration and post-registration efforts to contact, verify, or determine the employer (whether successful or not) must be recorded in either claims e-file or Employer Account System ("EAS") notepad, as applicable.

INVESTIGATION OF AN EMPLOYER FOLLOWING A CLAIM

If a Board officer is presented with a worker's claim and it appears that the claimant's employer is not registered with the Board, the Board officer must attempt to determine the firm's

- legal name,
- trade name,
- shareholders' names, or in the case of a proprietorship or partnership, the proprietor or partners' names and their respective aliases,
- mailing address, operating address, or both, and
- telephone number,

and, in determining the above, the Board officer shall, as necessary, search the Registrar of Companies database, including active and historical "Company Search" and "Firm Search".

If the Board officer is not reasonably satisfied of the employer's identity, the Board officer may contact the claimant to obtain the necessary registration information⁴ regarding the employer. If such contact is made by telephone, all significant information must be noted in claims e-file; and if such contact is made in writing,⁵ the claimant should be given 20 calendar days to respond.

If, however, the Board officer is reasonably satisfied of the employer's identity, the Board officer must search each of the EAS and Workflow to determine whether the employer is registered with the Board under an identity different from that reported by the claimant, or has applied to register with the Board.

² Such obligations derive from the employer's status as employer and are independent of registration.

³ As at 1 January 2003, the *President's Assignment of Authority under Part 1 of the Workers Compensation Act* authorizes a Claims Analyst or an Employer Service Representative to register an employer under Section 38 of the *Act*.

⁴ A Form 6 (Application for Compensation & Report of Injury or Occupational Disease) completed by the claimant or a Form 8 (Physician's First Report) may also be used as part of the determination of an employer.

⁵ Letter R24 "Unable to firm code – request to claimant for more information" or its equivalent should be used.

Where the employer is identified and it is determined that the employer is not registered or has not applied for registration with the Board, the Board officer must attempt to contact the employer by each of telephone and in writing for the purpose of registration. If the Board officer is successful in contacting the employer by telephone, the Board officer must attempt to obtain the above-noted minimum requisite information for registration.

If the Board officer is unsuccessful in contacting the employer by telephone and

- is reasonably certain of the employer's mailing address, operating address, or both, the Board officer must write⁶ to the employer at either or both addresses, and the employer is given 20 calendar days to respond, or
- is not reasonably certain of the employer's mailing address, operating address, or both, and the employer is incorporated, the Board officer must write⁷ to the employer at the employer's registered office as obtained from the Registrar of Companies database, and the employer is given 20 calendar days to respond.

If the employer does not provide the required information to complete registration (by failing to respond to the Board's telephone messages, telephone inquiries, or letter), the Board officer shall, using reasoned discretion, do one or more of the following:

- Telephone the claimant and request further information regarding the employer; and, in particular, the above-noted minimum requisite information for registration.
- Write⁸ to the claimant and request further information regarding the employer; and, in particular, the above-noted minimum requisite information for registration. The claimant is given 20 calendar days to respond.
- Conduct a business license search to determine any or all of the employer's legal name, address, or industry.
- Conduct a telephone book and internet search to determine any or all of the employer's legal name, address, or industry.
- Take into account, any or all of the employer's trade name, advertising, or signage to determine the employer's industry.

All pre-registration efforts to contact or determine the employer (whether successful or not) must be recorded in claims e-file under the appropriate claim number; and all post-registration efforts to contact, verify, or determine the employer must be recorded in EAS notepad.

INVESTIGATION OF AN EMPLOYER RESULTING FROM THIRD PARTY INFORMATION

The Board may also receive information regarding a putative employer from other sources;⁹ and upon receipt of such information, the Board officer must attempt to determine the new business owner's

- legal name,
- trade name,

⁶ Letter R25 "Unable to firm code – request to employer for more information" or its equivalent should be used.

⁷ Letter R25 "Unable to firm code – request to employer for more information" or its equivalent should be used.

⁸ Letter R24 "Unable to firm code – request to claimant for more information" or its equivalent should be used.

⁹ For example, Form 1810 (Employer Payroll and Contract Labour Report) includes a section that invites an employer who has sold its business to provide the name and telephone number of the new business owner.

- shareholders' names or in the case of a proprietorship or partnership, the proprietor or partners' names, and their respective aliases,
- mailing address, operating address, or both, and
- telephone number,

and, in determining the above, the Board officer shall, as necessary, search the Registrar of Companies database, including active and historical "Company Search" and "Firm Search".

If it is determined that the new business owner is not registered with the Board and its legal name and address are identified, the Board officer must

- establish a pending reference ID number (pending account) in EAS,
- mail a letter¹⁰ and an Employers Registration Application to the new business owner,
- scan the letter into E2file and reference the pending account, and
- contemporaneously, document all information gathered and actions undertaken in EAS notepad.

The Board officer need take no further action if there is no evidence that the new business owner is an employer. If, however, there is such evidence and the employer has not responded to the Board's letter¹¹ within 20 calendar days of it being mailed to the employer, the Board officer must

- conduct a business license search to determine any or all of the employer's legal name, address, or industry.
- conduct a telephone book and internet search to determine any or all of the employer's legal name, address, or industry.
- take into account, any or all of the employer's trade name, advertising, or signage to determine the employer's industry.

All pre-registration and post-registration efforts to contact, verify, or determine the employer (whether successful or not) must be recorded in EAS notepad.

NOTICE PRIOR TO REGISTRATION

The Act¹² does not obligate the Board to serve or send notice of such Board initiated registration to the employer and policy does not obligate the Board to provide such notice in writing (or at all if notice is not practicable). Thus, the Board's commitment to notify the employer of such Board initiated registration may be discharged by any of telephone, regular mail, e-mail, or facsimile transmission.

Therefore, if the Board officer is successful in contacting the employer by telephone, the Board's commitment to notify the employer of an impending Board initiated registration, prior to such registration, will be discharged if the Board officer notifies the employer of such during that telephone conversation and contemporaneously records the fact of such notice in EAS notepad.

¹⁰ Letter 18E16 "Notice of registration requirements to unregistered employer" or its equivalent should be used.

¹¹ Letter 18E16 "Notice of registration requirements to unregistered employer" or its equivalent.

¹² The commitment is derived from policy.

If, however, the Board officer is not successful in contacting the employer by telephone, the Board's commitment to notify the employer of an impending Board initiated registration, prior to such registration, will be discharged if the Board officer, using reasoned discretion, decides to use any one or more of a voice-mail message, regular mail, e-mail, or facsimile transmission to effect such notice. The Board officer must record in EAS notepad the reasons for providing notice through the means chosen and may record the reasons for not providing notice through the other noted means.

REGISTRATION

If at any time, the Board officer is reasonably satisfied that the employer has provided the Board with sufficient information to effect registration, the Board officer shall register the employer; and, in due course a letter¹³ will be sent to the employer confirming the particulars of its registration.

If, however, the employer fails to provide the Board with sufficient information to effect registration and the Board officer is reasonably satisfied of the employer's identity and of the accuracy of the above-noted minimum requisite information for registration obtained, the Board officer must effect a Board initiated registration and

- if practicable, notify (as above) the employer of such impending registration,
- complete the employer's registration, and
- inform the employer in writing¹⁴ of such registration.

¹³ Letter 18E08A or 18E08Q (the Welcome letter) or their equivalents.

¹⁴ Letter R27 "Section 38 registration" or its equivalent and Letter 18E08A or 18E08Q (the Welcome letter), or their equivalents.