

**Sec. 31-51qq-5. What is meant by “successor in interest”?**

(a) For purposes of FMLA, in determining whether an employer is covered because it is a “successor in interest” to a covered employer, the following factors shall be considered:

- (1) Substantial continuity of the same business operations;
- (2) Use of the same plant;
- (3) Continuity of the work force;
- (4) Similarity of jobs and working conditions;
- (5) Similarity of supervisory personnel;
- (6) Similarity in machinery, equipment, and production methods;
- (7) Similarity of products or services; and
- (8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a “successor in interest” exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality. Whether the successor has notice of the employee’s claim is not a consideration. Notice may be relevant, however, in determining successor liability for violations of the predecessor.

(c) When an employer is a “successor in interest,” employees’ entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. For example, the successor, whether or not it meets FMLA coverage criteria, shall grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including job restoration at the conclusion of the leave. A successor which meets FMLA’s coverage criteria shall count periods of employment and hours worked for the predecessor for purposes of determining employee eligibility for FMLA leave.

(Adopted effective March 9, 1999; Amended August 3, 2022)