



WORKERS' COMPENSATION BOARD OF BC

Policy and Research Division

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Update 2004 – 6

TO: HOLDERS OF THE *PREVENTION MANUAL*

This update of the *Prevention Manual* contains amendments implemented since update 2004 – 5.

This update includes:

- Item D3-119-1, *General Duties – Owners*
- Item D3-123/124-1, *General Duties – Overlapping Obligations*

If you have any questions regarding subscription information for updates to the *Prevention Manual*, please call WCB Customer Service at 1-866-271-4879.

Margaret Eckenfelder
Vice President
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Transmittal Sheet for Update 2004 – 6

**Check
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Remove Old Pages Numbered/Titled:

Insert New Pages Numbered/Titled:

- | | | |
|---|---|---|
| ☒ | D3-119-1
General Duties – Owners | D3-119-1
General Duties – Owners |
| ☒ | D3-123/124-1
General Duties – Overlapping
Obligations | D3-123/124-1
General Duties – Overlapping
Obligations |

RE: General Duties – Owners**ITEM: D3-119-1**

BACKGROUND

1. Explanatory Notes

Section 119 of the *Act* sets out the general duties of owners under Part 3 of the *Act*. This policy clarifies when these duties apply, and which owner(s) will be responsible for compliance, in multiple owner situations.

2. The Act

Section 106:

“owner” includes

- (a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and
- (b) a person who acts for or on behalf of an owner as an agent or delegate.

Section 119:

Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
- (c) comply with this Part, the regulations and any applicable orders.

POLICY

The purpose of this policy is to ensure that owners understand and fulfill their responsibilities under section 119 of the *Act*, especially in multiple owner situations.

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The term “owner” is defined broadly under the *Act* to include several parties such as the person who holds the legal title to land or premises, a mortgagee in possession, a tenant, a lessee, a licensee, a trustee, and any other occupier of lands or premises used or to be used as a workplace.

Accordingly, more than one person may simultaneously meet the definition of the term “owner” in respect of a particular workplace. For example, both the entity that holds legal title to land and the entity that leases it for business purposes would qualify as owners under the *Act*. In such circumstances, referred to as multiple owner situations, all the owners of a particular workplace are responsible for fulfilling the duties set out in section 119 of the *Act*, the regulations, and any applicable orders, subject to the Limited Exemption under section 124 of the *Act*.

When the duties set out in section 119 of the *Act* have not been met by a party or parties, and the Limited Exemption does not apply, Board officers will determine which owner(s) should be held responsible for the violation. In making this determination, Board officers will consider who had or should have had knowledge of, and control over, the particular workplace. To assist in this consideration, a non-exhaustive list of factors is set out below. When these factors are present, an owner will likely be held responsible for or have to address an issue.

Category 1: Knowledge

1. The owner knew or should have known that:
 - (a) persons would be at or near the land and premises that were being used as a workplace, and
 - (b) the health and safety of such persons might be harmed by the condition or use of the workplace, and
 - (c) the extent of the harm, if it occurred, would be more than minor or trivial.

Category 2: Control

2. The owner had some control or influence over the safety of the workplace in that the owner:
 - (a) could practicably have taken measures necessary to eliminate or reduce either:
 - (i) the risk of the potential harm, or
 - (ii) the extent of the potential harm, to persons at or near the workplace; or

- (b) possessed material information and either:
 - (i) failed to communicate all this information to the persons at or near the workplace and thus, prevented them from taking measures to protect themselves, or
 - (ii) communicated all this information to the persons at or near the workplace, but then unreasonably expected those persons to take the required precautions against a particular hazard.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Guidelines available on the WCB website.

EFFECTIVE DATE:	December 1, 2004
AUTHORITY:	s.119, <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also sections 73 (Levies) and 111 (Board's mandate under this Part) of the <i>Act</i> ; Part 3, Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences) of the <i>Act</i> ; Policies in the <i>Prevention Manual</i> in Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences); and policy item #113.00 (Charging of Claims Costs – Introduction) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	On December 1, 2004, provisions of the <i>Act</i> with respect to multiple owner situations were clarified, and the list of factors which Board officers consider before holding an owner responsible for a compliance issue were rewritten in a more directive manner.
APPLICATION:	To all situations in which an owner has responsibilities under section 119 of the <i>Act</i> on or after December 1, 2004.

**RE: General Duties –
Overlapping Obligations****ITEM: D3-123/124-1**

BACKGROUND

1. Explanatory Notes

Section 123 of the *Act* describes how persons may be subject to obligations in relation to more than one role. Section 124 of the *Act* explains what can happen when more than one person is responsible for fulfilling the same obligations. This policy provides guidance on when a party with obligations under the *Act* will be held responsible for a violation of these responsibilities despite the fact that one or more other parties share the same obligations.

2. The Act

Section 123:

- (1) In this section, "function" means the function of employer, supplier, supervisor, owner, prime contractor or worker.
- (2) If a person has 2 or more functions under this Part in respect of one workplace, the person must meet the obligations of each function.

Section 124:

If

- (a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and
- (b) one of the persons subject to the obligation complies with the applicable provision,

the other persons subject to the obligation are relieved of that obligation only during the time when

- (c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
- (d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

POLICY

The purpose of this policy is to ensure that all of the duties under the *Act* are effectively fulfilled despite the fact that multiple parties may share the same responsibilities.

All parties with duties under the *Act* may be able to affect the health and safety of persons at or near a workplace. Any and all of these parties may be cited for violations of their statutory duties regardless of whether or not another person has fulfilled his or her statutory responsibilities.

Under section 124 of the *Act*, one person may be relieved of his or her obligations under Part 3 of the *Act* or the regulations if:

- another person who is subject to the same obligations complies with those obligations, and
- simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
- the health and safety of persons at the workplace would not be put at risk by the compliance of only one person.

The first requirement of this Limited Exemption means that persons who have the same duty under the *Act* or regulations may agree amongst themselves as to who should perform it. The Board is neither bound by any agreements of this nature, nor by whether the terms of the agreement are complied with. The Board's primary concern is that the duty in question is fulfilled.

Further, even if the first requirement is satisfied, the Limited Exemption will only apply if the Board determines that the second and third requirements set out in section 124 are also satisfied. The third requirement of the Limited Exemption will not be met if performance of the occupational health and safety duty by one person leaves health and safety risks that would be eliminated by others performing their duty.

PRACTICE

For any other relevant PRACTICE information, readers should consult the Guidelines available on the WCB website.

EFFECTIVE DATE:	December 1, 2004
AUTHORITY:	ss.123 and 124, <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also sections 73 (Levies) and 111 (Board's mandate under this Part) of the <i>Act</i> , Part 3, Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences) of the <i>Act</i> , Policies in



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the *Prevention Manual* in Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences); and policy item #113.00 (Charging of Claims Costs – Introduction) of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

On December 1, 2004, provisions of the *Act* with respect to overlapping obligations were clarified.

APPLICATION:

To all situations in which more than one party shares the same obligations under Part 3 of the *Act* or the regulations on or after December 1, 2004.