

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 14**

**Unlawful Reprisal Applications and Referrals under Section 50 of the
*Occupational Health and Safety Act***

This Information Bulletin describes how the Labour Relations Board handles applications or referrals by workers who complain that their employer has violated Section 50 of the *Occupational Health and Safety Act*. Section 50 prohibits employers from dismissing, disciplining, or suspending a worker (and from threatening to do any of those things) and from penalizing, intimidating, or coercing a worker because the worker has acted in compliance with or sought the enforcement of the *Occupational Health and Safety Act* or its Regulations.

A worker who believes that an employer has violated s. 50 may file a complaint with the Labour Relations Board. If there is a collective agreement, the worker may choose to have the matter dealt with through the grievance/arbitration process instead. A worker claiming to have been fired in an OHS-related reprisal may consent to having a Ministry of Labour, Training and Skills Development inspector refer the reprisal allegation to the Board. The Ministry will *not* act as the worker's representative before the Board.

Workers and employers may seek the assistance of the Office of the Worker Adviser or Office of the Employer Adviser. See the "Important Note" at the end of this Bulletin.

FILLING OUT AN APPLICATION OR REFERRAL

Applications to the Labour Board alleging a violation of Section 50 of the *Occupational Health and Safety Act* must be made on Form A-53 and referrals by an Inspector must have the consent of the worker and be made on a Ministry approved Form. The application or referral must describe fully and in an organized way all of the facts that are being relied on to support the allegation that the employer imposed an unlawful reprisal on the worker.

FILING THE APPLICATION OR REFERRAL

Before filing the application with the Board, the worker must deliver an Application Package to the employer and to any other person who the worker identifies as potentially affected by the application.

The Ministry of Labour, Training and Skills Development inspector will provide a copy of the completed referral to the employee, the employer, the trade union (if any), and any other organizations affected by the alleged reprisal, and will file the referral with the Board.

The Application or Referral Package consists of: 1) a copy of the completed application or referral and 2) a Notice of the Application or Referral (Form C-26). The worker must fill in his or her name and the employer's name on page 1 and the date on page 2 of the Notice before making the delivery.

Other material, including blank Response forms and Information Bulletins are available from the Board (505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1 - Tel. no. [416] 326-7500) or downloaded from the Board's website at www.olrb.gov.on.ca.

The package may be delivered by hand, courier, facsimile transmission, regular mail, or any other way agreed upon by the parties.

No later than five days (not including weekends, statutory holidays or any other day the Board is closed) after delivering the Application Package to the employer and other affected parties, the worker must file one copy of the application with the Board. The application or referral may be filed in any way other than by facsimile transmission or registered mail. If the application or referral is not filed within five days after delivering the package to the employer and other affected parties, the matter will be terminated.

FILING A RESPONSE

The employer and any other party who wants to participate in the case have ten days (not including weekends, statutory holidays or any other day the Board is closed) after receiving the Application or Referral Package to respond. They must first deliver a copy of the response to the worker and each other party in accordance with Rule 6.4 of the Board's Rules of Procedure. They must then file a copy of their response with the Board, using any method other than facsimile transmission or registered mail.

HOW THE APPLICATION OR REFERRAL IS PROCESSED

Soon after the response is filed, one of the Board's Mediators will contact the parties and try to help them reach an agreement that will settle the application or referral. The Mediator may meet with the worker and the employer separately, or at the same time.

Before or after a Mediator meets with the parties, the Board may be asked to dismiss the application because it does not make out an arguable case. If it does not, the application may be dismissed by the Board without a consultation or hearing. If this happens, all of the parties will be sent a Decision of the Board that sets out why the application was dismissed.

ROLE OF THE MEDIATOR

Mediators do not decide the case. They do not represent any of the parties in the case, nor do they act as advisors to any of the parties in the case. The role of the Mediator is to help the parties reach a settlement of the application or referral. In order to encourage frank and open discussion between the parties and the Mediator and increase the likelihood of settlement, Mediators do not tell the Vice-Chair or panel who will be hearing the case what was said at the meeting or what they think about the merits of the parties' positions. Also, Mediators will not submit documents to the Vice-Chair or panel -- if parties want documents to be considered by the Vice-Chair or panel, they must submit them.

During the settlement discussions, the Mediator may explain the Board's case law. These comments are made to help parties realistically assess their chances of success and evaluate the settlement proposals, and are not to be taken as legal advice.

THE HEARING OR CONSULTATION

If no settlement is reached, a hearing will be held with a Vice-Chair or panel. Each party is responsible for bringing to the hearing witnesses they want to testify on their behalf and documents that support their claim, and for presenting their own case. Parties are entitled but not required to be represented by a lawyer or other representative. The Board does not provide lawyers or representatives for people.

At the hearing, the employer must establish that it did not impose an unlawful reprisal on the worker. Usually, but not always, the employer gives its evidence first.

In some circumstances a consultation will be held with a Vice-Chair. At the consultation the employer must also establish that it did not impose an unlawful reprisal on the worker.

A consultation is different from a hearing. A consultation is meant to be more informal and less costly to the parties than a hearing, and the Vice-Chair plays a much more active role in a consultation than in a hearing. The goal of a consultation is to allow the Vice-Chair to expeditiously focus in on the issues in dispute and determine whether an employee's statutory rights have been violated.

While the precise format of a consultation varies depending on the nature of the case and the approach of the individual adjudicators, there are some universal features. To draw out the facts and arguments necessary to decide

whether the unlawful reprisal provision has been violated, the Vice-Chair may: 1) question the parties and their representatives, 2) express views, 3) define or re-define the issues, and 4) make determinations as to what matters are agreed to or are in dispute. The giving of evidence under oath and the cross-examination of witnesses are normally not part of a consultation, and when they are, it is only with respect to those matters that are defined by the Board.

Because the opportunity to call witnesses and present evidence is limited, the Board relies heavily on the information that is provided in the application, referral, and response. As such, the employer and worker (and any other affected party that participates) are required to provide in their application, or referral, and response all of the material facts that they intend to rely on. Parties who fail to do so may not be allowed to present any evidence or make any representations about these facts at the consultation.

The Board does not charge any service fees for the hearing. However, other costs associated with the hearing (for example, witness attendance fees or the cost of photocopying documents that you want the Board to read) are the responsibility of each party. It is not the Board's practice to have the "loser" pay the "winner's" costs.

The hearing or consultation is a legal proceeding that will determine the parties' legal rights. If a party does not attend the hearing or consultation, it will go ahead anyway and their rights will be determined in their absence.

Board hearings and consultations are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings and consultations are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

FOR WORKERS

THE OFFICE OF THE WORKER ADVISER (OWA) IS AN INDEPENDENT AGENCY OF THE ONTARIO MINISTRY OF LABOUR, TRAINING AND SKILLS DEVELOPMENT. THE OWA PROVIDES FREE ADVICE AND ASSISTANCE TO NON-UNIONIZED WORKERS WHO HAVE EXPERIENCED REPRISAL UNDER THE OHSA. OWA STAFF CAN FILE APPLICATIONS TO THE ONTARIO LABOUR RELATIONS BOARD AND PROVIDE REPRESENTATION TO WORKERS AT MEDIATIONS AND HEARINGS. THE OWA CAN BE REACHED AT: 855-659-7744 (TOLL-FREE) / 416-212-5335 OR ONLINE: www.owa.gov.on.ca

WORKERS MAY ALSO CONSIDER CONTACTING THE TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC, WHICH PROVIDES FREE INFORMATION, LEGAL ADVICE AND REPRESENTATION TO LOW INCOME WORKERS WHO FACE HEALTH AND SAFETY PROBLEMS AT WORK. THE CLINIC CAN BE REACHED AT: 416-971-8832 or www.workers-safety.ca

FOR EMPLOYERS

EMPLOYERS MAY CONSIDER CONTACTING THE OFFICE OF THE EMPLOYER ADVISER WHICH PROVIDES FREE INFORMATION, LEGAL ADVICE AND REPRESENTATION TO EMPLOYERS WITH FEWER THAN FIFTY (50) EMPLOYEES, WHO FACE UNLAWFUL REPRISAL APPLICATIONS UNDER SECTION 50. THE OFFICE OF THE EMPLOYER ADVISER CAN BE REACHED AT: 416-327-0020 or 1-800-387-0774 or www.employeradviser.ca