

ONTARIO LABOUR RELATIONS BOARD INFORMATION BULLETIN NO. 35

Unlawful Reprisal Applications

This Information Bulletin describes how the Labour Relations Board handles applications by employees who complain that their employer has violated the unlawful reprisal provisions of one of the following statutes:

- Section 174 of the *Environmental Protection Act* (which includes the *Environmental Assessment Act*, *Environmental Protection Act*, *Ontario Water Resources Act*, *Pesticides Act*, *Safe Drinking Water Act, 2002*, *Toxic Reduction Act, 2009*, *Nutrient Management Act, 2002* and the federal *Fisheries Act*).
- Section 105 of the *Environmental Bill of Rights, 1993*
- Section 9 of the *Smoke-Free Ontario Act*
- Section 104 or 110 of the *Public Service of Ontario Act, 2006*
- Section 18 of the *Public Inquiries Act, 2009*
- Section 30 of the *Fixing Long-Term Care Act, 2021*
- Section 116 of the *Retirement Homes Act, 2010*

The unlawful reprisal provisions of these statutes prohibit employers from dismissing, disciplining, penalizing, coercing, intimidating, or attempting to coerce or intimidate an employee because the employee has done any of the following things: has complied with or intends to comply one of the particular Acts or a regulation, order, term or condition, certificate of approval, licence, permit or direction under one of those Acts; has sought or may seek the enforcement of one of those Acts or a regulation under one of those Acts; has given or may give information to a Ministry or a provincial officer designated under one of those Acts; or has been or may be called upon to testify in a proceeding related to one of those Acts or regulations under one of those Acts.

FILLING OUT AN APPLICATION

Applications alleging a violation of the unfair reprisal provisions must be made on Form A-129. The application 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 employee.

FILING THE APPLICATION

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

The Application Package consists of: 1) a copy of the completed application, and 2) a Notice of the Application (Form C-56). The employee must fill in her or his 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, 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 in accordance with Rule 6.4 of the Board's Rules of Procedure.

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 employee must file one copy of the application with the Board. The application may be filed in any way other than by facsimile transmission, e-mail or registered mail. If the application 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 Package to respond. They must first deliver a copy of the response to the employee and each other party in accordance with Rule 6.4 of the Board's Rules of Procedure. They must then file one copy of their response with the Board, using any method other than facsimile transmission, e-mail or registered mail.

MEDIATION

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. The Mediator may meet with the employee and the employer separately, or at the same time.

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. 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

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 employee. Usually, but not always, the employer gives its evidence first.

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

Board hearings 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 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.