

Complaint Resolution Process

March 2011

Division 3 of the *Employment Standards Code (Code)* together with other sections of the *Code* and Employment Standards Regulation (Regulation) provides for the process used by Employment Standards when a complaint is filed. There are several points at which fees are, or may be, assessed to recover some of the costs to the Government of Alberta for resolving disputes. As well, there are deposit requirements if an employer wants to appeal an Order of Officer (order) issued by an Employment Standards Officer (officer).

A complaint by an employee must be filed **within six months** of an employee's last day of employment. In extenuating circumstances, the Director of Employment Standards (Director) may extend the time for filing a complaint. In all cases, a complaint should be filed as soon as possible.

Before a complaint is filed

Employees are encouraged to attempt to resolve their dispute before filing a complaint with Employment Standards. To assist in this process, a Self-Help Kit and other resources related to making a complaint are available online at www.employment.alberta.ca/SFW/1697.html.

Filing a complaint

Note: No employer may terminate or restrict the employment of anyone because the individual made a complaint under the Code or Regulation. See Section 125 of the *Employment Standards Code* for further information.

An employee files a written complaint. When the complaint is accepted for investigation, the employer is notified and provided with a copy of the complaint. The employer is requested to review the complaint and to submit any money owing. If the employer responds with payment as requested, this is forwarded to the employee and the complaint is concluded.

If an employer disagrees with the complaint, or the amount forwarded is less than what is claimed by the employee, the employer is expected to provide supporting records or other information to the investigating officer.

The officer assesses the information provided and investigates further as necessary.

Officer determines an employee is owed money

Where the officer determines that money is owing to the employee, and the employer pays as requested, the complaint is concluded.

If the employer disputes the amount owing, the officer will investigate and undertake appropriate mediation and resolution efforts. If a voluntary resolution can not be achieved, the officer will issue a formal order to pay.

If a formal order is issued a 10 per cent fee, payable to the Crown, will be added to the assessment (minimum fee is \$100).

An order may be paid or appealed to an Employment Standards Umpire (Umpire) with the Provincial Court of Alberta.

If the order is **not paid or appealed** to an Umpire, it will be filed with the Court of Queen's Bench (Court) and has the same legal status as a judgment of that Court. For more information, please see the "Collecting an Employment Standards Judgment" Fact Sheet at <http://employment.alberta.ca/esfactsheets>.

If the order is **paid**, the complaint is concluded. If the order is appealed, the appeal **must** be received by the Registrar of Employment Standards (Registrar) within 21 days from the date the order was served.

An appeal from an employer must be accompanied by a deposit equal to the full amount of the order, including the additional fee, as well as the reasons for the appeal.

An appeal from an employee must provide the reasons for the appeal.

The Registrar may initiate mediation of the matter to attempt resolution prior to the Umpire hearing.

An Umpire will conduct a hearing where the parties have an opportunity to make their case. The Umpire will revoke (cancel), vary, or confirm the order.

- If the Umpire **revokes** the order, the full deposit is returned to the employer including any fees assessed.
- If the Umpire **varies** the order, the amount shown as owing on the order, and fees, will be adjusted proportionately. If appropriate, any difference will be returned to the employer.
- If the Umpire **confirms** the order, the employee will receive the money owed.

Note: An Umpire has the ability to order either of the parties, where their conduct warrants, to pay costs, including all or part of the government's cost of conducting the Umpire hearing. For more information, please see the "Employment Standards Umpire Hearing" Fact Sheet at <http://employment.alberta.ca/esfactsheets>.

Officer determines an employee is not owed money

If the officer determines that the employee is not owed any money, the officer will issue a formal “Decision of Officer” (decision). The decision, along with reasons, will be served on the employee. The employer will be informed of the decision.

The employee may appeal the decision to the Director. The appeal, with reasons for the appeal, **must** be received by the Director within 21 days from the date the decision was served. The employer will be notified if an appeal is filed.

If the decision is appealed, the Director, or an officer appointed by the Director, reviews the file and will either deny or support the appeal. If the appeal is denied, the employee and employer are notified in writing and the file is closed. If the appeal is supported and the employee is found to be entitled to money, the Director or designate will revoke the decision and issue an order to pay requiring the employer to pay the assessed sum of money contained in the order. Once the order is issued, an employer may appeal the order and the process to be followed is the same as when an officer determines that money is owed to an employee. See above.

Alternative dispute resolution

The Director and/or the Registrar may undertake initiatives for the voluntary resolution of a dispute before the matter is heard in a formal setting. This may involve mediation or any other process agreeable to the parties.

Collecting money owed to employees

If there is reason to believe that an employer has failed or is likely to fail to pay what is owed to an employee, a demand for this money may be served on a third party (a bank or anyone else who may owe the employer money). The third party is obliged to pay the amount demanded to the Director.

This demand may be issued at any time prior to, during, or after a formal order is made by an officer.

If a Court judgment was not obtained prior to the demand being issued, the employer has opportunity to appeal to an Umpire the amount to be paid to the employee.

If an order is not paid or appealed, it will be filed in Court and is then enforceable as a judgment of the Court. The judgment can be turned over to a collection agency for collection. If this occurs, a collection agency fee will be payable **in addition to** the full amount of the judgment.

Employment Standards complaint processing offices

Edmonton

Main Floor,
Sterling Place
9940 – 106 Street NW
Edmonton, AB
T5K 2N2

Calgary

Suite 150,
Elveden Centre
717 – 7 Avenue SW
Calgary, AB
T2P 0Z3

Lethbridge

Unit 360,
Provincial Building
200 - 5 Avenue S
Lethbridge, AB
T1J 4L1

Red Deer

Room 209,
Provincial Building
4920 - 51 Street
Red Deer, AB
T4N 6K8

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