

Claimants Appealing to a Director

July 2014

Section 88 of the *Employment Standards Code (Code)* sets out the requirements for an appeal to be filed by a claimant to the Director of Employment Standards (Director) after being served with the notice of a decision under section 85 of the *Code*.

Filing an appeal to the Director

Section Heading

A claimant who does not agree with an Employment Standards Decision of Officer may appeal to the Director.

The *Code* requires a notice of appeal be received by the Director **within 21 days** of the date of service of the Decision of Officer. When a claimant mails in the notice of appeal, the envelope can be postmarked by the Canada Post Corporation **within 21 days** of the date of service of the Decision of Officer on the claimant. When the notice of appeal is hand-delivered, it must be received within 21 days of the date of service.

The time limit for receiving appeals cannot be extended for any reason.

The Office of the Registrar of Appeals administers the appeal process.

Requirements for a valid appeal

For the appeal to be valid, the notice of appeal **must**:

- be in writing,
- be served on the Director within the 21 day time limit described above, and
- include written reasons for the appeal.

Please refer to section 88 of the *Code*.

Director's authority to Delegate

On receipt of the notice of appeal by the Office of the Registrar of Appeals, the Director delegates consideration of the appeal to a reviewing officer.

Parties to an appeal

The parties to the appeal are the claimant and the employer.

On occasion, an appeal is received which cannot be accepted by the Registrar because it is not a valid appeal under the *Code*. Some examples of scenarios where appeals are not accepted include:

- The appeal was not served on the Director within the 21 day time limit;
- The appeal did not contain clear reasons for appeal.

A letter will be sent to both the claimant and employer with an explanation of why the appeal was denied.

Requirement for written reasons for a valid appeal

The *Code* requires that an appeal of a Decision of Officer be in writing. Provincial Court Judges have set out rules in case law that a person who is appealing a decision must show that the decision is incorrect. The written appeal must show the specific errors that the claimant believes were made in the Decision of Officer.

The Appeal Process

When a valid appeal has been served on the Director, both the employer and claimant will receive a letter confirming the appeal. The employer will receive a copy of the notice of appeal and all attachments that were included by the claimant with the notice of appeal.

Each party to a valid appeal will be contacted by the reviewing officer to ensure administrative fairness.

Appeals are reviewed in the order they are received. The claimant and employer will be contacted by the reviewing officer within three weeks of the Office of the Registrar receiving the valid notice of appeal. The employer and claimant will not be requested to attend a hearing in person before the reviewing officer.

The reviewing officer reviews the information that was submitted to the Employment Standards officer who made the Decision of Officer. The reviewing officer also reviews the reasons for appeal submitted by the claimant and the response to the reasons for appeal submitted by the employer, if any.

When Appeal Review is completed

The reviewing officer may determine the claimant is entitled to earnings under the *Code* or the claimant is not entitled to earnings. If the claimant is entitled to earnings, an Order of Officer is issued by the reviewing officer. Both the employer and the claimant then have the right under the *Code* to appeal the Order of Officer to an umpire.

There is no right of appeal of a decision by the reviewing officer that the claimant is not entitled to earnings.

There is no right of appeal of a decision by the reviewing officer that the original Employment Standards officer was justified in refusing to accept or investigate the complaint.

Where to deliver a notice of appeal

A notice of appeal may be served on the Director at the office of the Registrar of Appeals at the following locations:

Northern Alberta

Office of the Registrar of Appeals
Employment Standards
7th Floor, Labour Building,
10808 – 99 Avenue NW
Edmonton, Alberta T5K 0G5

Appeals may be faxed to 780-644-7173.

Southern Alberta

Office of the Registrar of Appeals
Employment Standards
#150, 717 – 7 Avenue SW
Calgary, Alberta T2P 0Z3

Appeals may be faxed to 403-297-2385.

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