

Disciplinary action complaints

OHS information for employers and workers

This bulletin explains the disciplinary action complaint process followed by Alberta Occupational Health and Safety (OHS). This includes what complaints OHS can accept, steps in the process and how to file a complaint.

KEY INFORMATION

- Disciplinary action is any action or threat of action that can negatively affect a worker's employment.
- No one can take disciplinary action against a worker for complying with OHS laws or orders.
- When an employer disciplines a worker who complied with health and safety law, it is the employer's obligation to establish that the employer took that action for a reason other than the worker following the law.

This bulletin explains the complaint process for disciplinary actions that took place **on or after December 1, 2021**.

To file a complaint of disciplinary actions that occurred **prior to December 1, 2021**, call the OHS contact Centre at 1-866-415-8690.

Under section 19 of the *OHS Act*, a worker can file a disciplinary action complaint with OHS if they have reasonable cause to believe their employer has contravened section 18 of the act.

Section 19 of the act sets out the process around disciplinary action complaints.

- Workers who file a disciplinary action complaint with OHS must do so within 180 days of the date of the action taken against them.
- OHS officers may refuse to investigate complaints that they find to be without merit or frivolous, trivial, vexatious, filed with improper motives or otherwise an abuse of process.
- OHS can only accept disciplinary action complaints from workers not bound by a collective agreement.
 - Workers bound by a collective agreement must use their grievance processes to pursue disciplinary action complaints.

No person shall take any disciplinary action against a worker acting in compliance with this Act, the regulations, the OHS Code or an order issued under this Act.

-OHS Act, s.18

Disciplinary actions

Section 1(j) of the *OHS Act* defines disciplinary action as "any action or threat of action by a person that does or would adversely affect a worker with respect to any terms or conditions of employment."

Examples include:

- Inhibiting or denying opportunity for promotion.
- Termination, layoff or suspension.
- Demotion or transfer.
- Discontinuing or eliminating a job.
- Changing a job location.
- Reducing wages.
- Changing hours of work.
- Reprimands, coercion, intimidation or the imposition of any discipline or other penalty.

OHS complaint process

Intake

After a worker files a disciplinary action complaint with OHS, an assigned officer will review the complaint. If necessary, the officer will contact the worker to get more information.

Refused complaints

If an officer refuses to investigate a disciplinary action complaint (for instance, if the 180-day limit for filing the complaint has passed, the officer finds the complaint without merit, or the worker is bound by a collective agreement) they will notify the worker of that refusal in writing.

- If an OHS officer refuses to investigate a disciplinary action complaint because they find it without merit or it is frivolous, trivial, vexatious, filed with improper motives or otherwise an abuse of process, the worker can ask an OHS Director to review that decision.
- The Director can confirm or revoke the officer's refusal, or assign the complaint to another officer.

Complaint investigations

OHS disciplinary action complaint investigations are impartial, objective and follow a defined process. To start with, the investigating officer will establish that:

- The worker was complying with a requirement in OHS legislation or an OHS officer's order.
- The employer took disciplinary action against the worker.

If the officer establishes both points to their satisfaction, they may try to help the parties find a voluntary resolution to the complaint.

If voluntary resolution is not possible, the officer will ask the employer to provide information to support that they took the disciplinary action for a reason other than health and safety compliance.

Section 19(10)(b) of the act puts the onus on the person who took disciplinary action to establish that it was for a reason other than the worker complying with OHS legislation or orders.

- If the person cannot do so, then the contravention of section 18 is established.
- OHS officers do not address employment disputes or determine if disciplinary actions taken for non-OHS reasons are appropriate.
 - If a worker believes that disciplinary action taken for a stated reason other than health and safety is invalid or unjustified, they can contact [Employment Standards](#) or a lawyer.

Throughout the investigation, the employer and worker will both have opportunity to review and respond to any relevant information provided to OHS. The investigating officer facilitates these opportunities.

OHS decisions

When an officer completes a disciplinary action complaint investigation, they will notify both parties (employer and worker) of their decision in writing.

If the officer finds that the employer took disciplinary action in contravention of section 18 of the act, they can require the employer to:

- Stop the disciplinary action.
- Reinstatement the worker to their former employment under the same terms and conditions.
- Pay the worker not more than the equivalent of wages and benefits the worker would have earned if the disciplinary action did not happen.
- Remove the reprimand or other references to the matter from employment records.
- Take any other measure the officer considers necessary to prevent a recurrence.

Appealing a decision

Either party can appeal the written decision from a completed OHS investigation with the Alberta Labour Relations Board ([ALRB](#)). Any orders stemming from the decision can also be appealed to the ALRB.

The appellant must send the Notice of Appeal to the ALRB within 30 days of receipt of the disciplinary action complaint decision from OHS.

ALRB decisions:

- Are final (subject only to judicial review).
- Become public information.
- Are posted on the ALRB website.

Out of scope

Disciplinary action complaints under the *OHS Act* strictly address cases where an employer takes disciplinary action against a worker because the worker complied with OHS legislation or orders.

Disciplinary action complaints do not address discrimination, wrongful dismissal, health and safety concerns, or collective bargaining issues. If your concerns involve these, the following may be helpful. (See also "For more information" on the next page.)

Discrimination

The *Alberta Human Rights Act* protects all Albertans from discrimination in the areas of employment. Visit the [Alberta Human Rights Commission](#) for more information.

Wrongful dismissal

Employment Standards addresses non-OHS employment disputes. Visit the [employment standards](#) web page for more information.

Health and safety concerns

OHS does not address health and safety concerns during a disciplinary action complaint. If you have occupational health and safety concerns, you may contact OHS. See "Contact us" on the next page for details.

Collective bargaining issues

A worker's union should be their first point of contact regarding any grievance, including disciplinary action complaints when a worker is subject to a collective agreement. Workers who believe they have not been fairly represented by their union regarding their grievance, may consider a duty of fair representation complaint through the [ALRB](#).

How to file a disciplinary action complaint

There are two ways a worker can file a disciplinary action complaint with OHS. Filing [online](#) is preferred, but you can also call the OHS Contact Centre. See “Contact us” on this page.

To file a complaint of disciplinary actions that occurred prior to December 1, 2021, call the OHS contact Centre at 1-866-415-8690.

For more information

Alberta Human Rights Act

qp.alberta.ca/documents/Acts/A25P5.pdf

Alberta Human Rights Commission

albertahumanrights.ab.ca

Alberta Labour Relations Board

alrb.gov.ab.ca

Appeal an OHS action

alberta.ca/appeal-ohs-action.aspx

Employment Standards

alberta.ca/employment-standards.aspx

Contact us

OHS Contact Centre

Anywhere in Alberta

- 1-866-415-8690
- Edmonton and surrounding area
- 780-415-8690
- Deaf or hard of hearing (TTY)
- 1-800-232-7215 (Alberta)
- 780-427-9999 (Edmonton)

Notify OHS of health and safety concerns

alberta.ca/file-complaint-online.aspx

Call the OHS Contact Centre if you have concerns that involve immediate danger to a person on a work site.

Report a workplace incident to OHS

alberta.ca/ohs-complaints-incidents.aspx

Website

alberta.ca/ohs

Get copies of the OHS Act, Regulation and Code

Alberta Queen’s Printer

qp.gov.ab.ca

OHS

alberta.ca/ohs-act-regulation-code.aspx

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