



MANITOBA LABOUR BOARD

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**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 11
REDUCTION OF DEPOSITS ON REFERRALS TO THE MANITOBA LABOUR BOARD
UNDER *THE EMPLOYMENT STANDARDS CODE***

Under Section 111(1) of *The Employment Standards Code*, C.C.S.M. c. E110, (the "**Code**"), a party who is required by an order of the Employment Standards Division (the "Division") to pay wages and who wishes to appeal the order to the Manitoba Labour Board (the "Board") is required to deposit with the Director of the Division, an amount equal to the total amount payable under an order sought to be challenged plus the required administrative fee. This amount must be paid at the time the request to refer the matter to the Board is filed with the Director.

However, Section 111(2) of the **Code** authorizes the Chairperson of the Board, on application, to reduce the amount of the deposit otherwise payable to an amount not less than \$5,000.00 (the "prescribed amount" under the Regulations). Section 111(2) of the **Code** states:

Chairperson may reduce deposit

111(2) If the amount to be paid as a deposit is more than a prescribed amount, the board chairperson may, on application, reduce it to an amount not less than the prescribed amount if he or she is satisfied that it would be unfair or unreasonable not to do so.

The purpose of this bulletin is to advise any party who wishes to make a "deposit reduction" application that the following principles and general questions will be considered when the Chairperson assesses whether it would be unfair or unreasonable not to reduce the full amount of the deposit, in whole or in part:

- a. A reduction request will be assessed in the context that the intention of the Legislature in enacting Section 111(1) was to ensure that the full amount of any wages ordered to be paid to (an) employee(s) will be available for immediate distribution to the employee(s) in the event the Board, following the hearing of a referral/appeal on its merits, determines that the amount(s) ordered to be paid by the Division is/are properly owing to the employee(s). The purpose is to provide full security to the employee.
- b. As Section 111(2) constitutes an exception to the purpose of Section 111(1), the party seeking a reduction bears the onus to satisfy the Chairperson that it would be unfair and unreasonable not to reduce the amount of the deposit.
- c. In order to meet this onus, a party should be prepared address the following issues:
 - i. Will there be *prejudice* to the party seeking the reduction in the event that the amount otherwise payable is not reduced? The fact that a party simply objects to paying the full amount is not sufficient, in and of itself, to establish prejudice;

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- ii. Does the payment of the full amount create an "*undue financial hardship*" for the appellant? Accordingly, consideration may be given to the amount of the Division's order in relation to the requirement that at least \$5,000.00 must always be paid. Whether a business is an active, stable and viable business would also be a relevant consideration.
- iii. Does the appeal raise arguable or reasonable legal, factual or a combination of legal and factual issue(s)?
- iv. In the case of an order issued by the Director of the Division, on his own accord, which affects more than one employee (e.g. a group termination), the amount of the gross wages owing to both the individual employees and the group of employees as a whole, will be considered along with the other principles identified.

The foregoing questions are general guidelines and they are not intended to be exhaustive or inflexible. The circumstances of each case will be considered by the Chairperson before determining whether, in his or her discretion, it would be unfair or unreasonable not to reduce the full deposit. The Chairperson, pursuant to Section 111(3), shall not hear a matter referred to the Board under Subsection 110(1) if he or she hears an application in respect of the reduction request.

As to procedure, a Notice of Hearing on a reduction application is served only on the party seeking the reduction and on the Director of the Division. The Director has the (optional) right to appear at a reduction hearing to make representations.