



MANITOBA LABOUR BOARD

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**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 18
THE EMPLOYMENT STANDARDS CODE - APPEAL HEARINGS - ADMINISTRATIVE
PENALTIES**

This bulletin is intended to help you prepare for your hearing at the Manitoba Labour Board (the “**Labour Board**”). It is a general guideline and does not attempt to address every issue that may arise.

Under Regulation 29(1) of *The Employment Standards Regulation* (6/2007), (the “**Regulation**”), the Director of the Employment Standards Division (the “**Director**”) may impose an administrative penalty as set out in the schedule for a contravention of a provision of *The Employment Standards Code*, C.C.S.M. c. E110, (the “**Code**”), or of *The Construction Industry Wages Act* listed in the Schedule.

Pursuant to Section 138.2(1) of the **Code**, the person named in a notice of administrative penalty may, in accordance with subsection (2), request the **Director** to refer to the Labour Board for an appeal of the penalty. Upon receipt of the request, the **Director** must refer the matter to the Labour Board.

Section 138.2(2) of the **Code**, reads as follows:

How to appeal

138.2(2) The request to refer a notice of administrative penalty to the board

- (a) must include a statement of the facts and reasons for the appeal; and
- (b) must be filed with the director
 - (i) within 30 days after the notice is served on the person, if the penalty is in respect of a matter for which an order was made under subsection 96.1(1) (compensation or reinstatement), and
 - (ii) in any other case, within seven days after the notice is served on the person,

or within any further period of time allowed by the director.

Deposit

138.2(3) At the time of filing the request with the director, the person filing it must deposit with the director an amount equal to the penalty being appealed.

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As to procedure, upon referral of an appeal from a notice of administrative penalty, a Notice of Hearing is served on the Employer seeking appeal of the administrative penalty and on the **Director**.

The **Director** is a party to these proceedings and has standing to appear before the Labour Board and may be represented by Counsel and you may choose to be represented by a lawyer or other person or you may represent yourself.

After hearing the appeal, the board, pursuant to Section 138.2(6) of the **Code**,

- (a) Must confirm or revoke the penalty; and
- (b) If the penalty is confirmed, may award costs against the person required to pay the penalty if, in the board's opinion,
 - (i) The person's conduct before the board was unreasonable, or
 - (ii) The appeal was frivolous or vexatious.

Please Note:

All information contained in the Referral Package received from the Division and all information provided to the Labour Board at the hearing of an appeal is available to all parties to the appeal. Any information contained in the Referral Package and any testimony provided in evidence during the course of the hearing, may be referred to in a Substantive Order or Written Reasons for Decision issued by the Board which are thereafter published by the Board and provided to private publishers who may re-publish same, in whole or in part, in print or online.