

PREPARING FOR YOUR HEARING

What is the Manitoba Labour Board?

The Manitoba Labour Board is an independent and impartial quasi-judicial tribunal that hears cases. A board hearing is not as formal as a court hearing and every effort is made to help the parties understand the process. The board's decisions are legally binding.



Manitoba Labour Board offices

Who will hear my case?

Hearings may be heard by the neutral Chairperson or a neutral Vice-Chairperson of the Manitoba Labour Board. Some hearings are heard by a three person panel which would include the Chairperson or a Vice-Chairperson and two panel members. One is chosen from the employer community and one is chosen from the labour community.

When and where are hearings scheduled?

The Manitoba Labour Board will send a Notice of Hearing to tell hearing participants the date, time, place and nature of their hearing. It is important that the board has your current address (including your e-mail) and phone number for this purpose.

The Manitoba Labour Board conducts most hearings in boardrooms located at their Winnipeg offices. Hearings may also take place outside of Winnipeg, when needed. You must attend a hearing in person.

What happens if I cannot attend and want to change the hearing date?

You must attend the hearing to state your case. If you do not attend, the hearing will proceed without you and the matter will be decided in your absence.

If you are not able to attend the hearing, you must notify the Manitoba Labour Board in writing as soon as possible, explaining why you cannot attend the hearing and asking the board to change the date of the hearing. The board will review your request and advise all parties in writing if the date is changed.

What if the board does not change the hearing date?

If the board does not change the hearing date, it will advise all parties and the hearing will proceed as scheduled.

Getting Ready for the Hearing

Do I need to hire a lawyer for the hearing?

Many cases proceed without either party having a lawyer present, but you are entitled to have a lawyer or another person attend the hearing to help you. For a referral to a lawyer, you may wish to call the Community Legal Education Association at 204-943-3602 or toll free at 1-800-262-8800. Their website is www.communitylegal.mb.ca.

What language will my hearing be held in?

Your hearing can be held in English or French. Individuals who wish to have their hearing conducted in French must make a request to the board as soon as possible by calling 204-945-2089 to speak with a board officer.

The board has access to interpreters of many languages at no cost to you. If you will need an interpreter, contact the board as soon as possible.

Please note: The interpreter will not make arguments on your behalf. The interpreter's role is to help you and board members understand what is said in the hearing.

Can I watch another hearing as an observer? Are hearings open to the public?

Yes. You are welcome to attend a hearing as an observer to get a feel for the process before your case is heard. All hearings are open to the public unless the board decides otherwise. The board's offices and hearing rooms are accessible for persons with disabilities.

What documents should I bring to the hearing?

Carefully think your case through by writing down the points you want to make and deciding what information and documents to bring to the hearing to support your position. Collect and read through all the documents in advance of the hearing. It is important to identify the documents during the witness testimony. Documents accepted into evidence are recorded and numbered as exhibits.

Note: Bring six copies of each original document to the hearing. The board officer will keep a copy for the board's file and give a copy to each of the other parties, the three-person panel and the witness.

Who should I bring as a witness? What if my witness cannot attend the hearing? How do I obtain a subpoena and is there a fee?

Prior to the hearing, make a list of your witnesses who can assist you. All witnesses should be advised of the date, time and place of the hearing. Remind them to dress neatly. It may be helpful to write down and review the questions with each of your witnesses well in advance of the hearing.

Often times witnesses will attend the hearing voluntarily. However, if a witness does not want to appear at the hearing, either party can call the Manitoba Labour Board well in advance of the hearing and ask the board to issue a subpoena.

The subpoena is a legal document and contains the time, date and location of the hearing. The person who requests the subpoena must pick it up from the board, take responsibility for serving it properly and pay the required fee. Board staff can provide information about fees and serving a subpoena, if required.

A subpoena may be challenged by the other party.

Will the board accept sworn statements if a person cannot attend the hearing?

Generally no. In very rare cases, the board may accept evidence in the form of a written legal statement or a letter where the facts give a detailed account of the event. Written documents must be supported by a declaration formally swearing or affirming that the facts are true.

Some examples of unusual cases where the board may accept sworn statements may be when the person is no longer in the Country, or the person is deceased or can't attend the hearing and give evidence due to a medical condition.

Are statements allowed if not sworn or affirmed?

The board will not accept unsworn or unaffirmed written statements such as a letter signed by a person not attending the hearing.

Can I settle without going to a hearing?

Yes, cases often settle without a hearing. The board officer can help you if you are serious about settling the dispute and can assist the parties to attempt a resolution of the outstanding issues in an informal manner prior to the hearing. This is commonly referred to as mediation. Everything discussed in mediation is confidential and cannot be raised in a hearing if one is required.

What Happens On the Day of the Hearing?

What should I wear to the hearing? Can I get to the board's office by bus? Is there parking nearby?

You can wear casual attire to the hearing. The board's offices are located in downtown Winnipeg and are accessible by Winnipeg Transit.

Parking spots in downtown lots that charge by the hour or by the day are generally available near the Manitoba Labour Board offices. To avoid causing delays and interruptions during hearings, we do not recommend using time-limited downtown street parking.

How long will my hearing take?

Hearings usually start at 9:30 a.m. and finish by 4:30 p.m. Occasionally, hearings will start at 1:30 p.m. The board panel will announce lunch and short break times at the hearing.

The length of the hearing will vary depending on complexity and the number of witnesses called to testify. Sometimes hearings are scheduled for more than one day.

What happens when I arrive at the board's offices?

At the board's offices, the receptionist will direct you to a hearing room. A board officer will greet you and ask for your name and a list of the names of your witnesses, counsel, representative, interpreter or anyone else present with you at the hearing.



Manitoba Labour Board hearing room

Do the hearings always start on time? Where does everyone sit?

The board makes every effort to start the hearing on time. The board officer will advise the parties when the hearing will commence. The panel will enter the hearing room and sit at the front of the room facing the parties who will sit at a table across from them. A one-person or three-person panel will hear the matter and weigh evidence and arguments to decide the case.

In the case of a three-person panel, the chairperson or vice-chairperson sits between the other two panel members and conducts the hearing. At the start of the hearing, the chairperson or vice-chairperson asks everyone in the room to introduce themselves, then explains the process and answers any questions you may have.

The Manitoba Labour Board must decide the matter. Neither the panel nor its staff can provide legal advice or act on your behalf.

The board officer will be sitting at a separate table beside the panel members and remains in the hearing room to confirm appearances, swear in parties and record exhibits and case law.

Can all of the people who attend the hearing remain in the hearing room with me?

Before the hearing starts, your witnesses will be asked to sit in a separate room. When it is time for a witness to testify, the board officer will bring the witness to the witness chair in the hearing room. Witnesses who are finished testifying, may choose to remain in the hearing room.

Your legal counsel or representative will sit beside you at a table. If you attend the board's offices with your interpreter, that person will be required to take an interpreter's oath at the start of the hearing and will usually sit beside you in the hearing room. There is public seating at the back of the room for observers.

Are proceedings recorded?

Proceedings are not recorded. Panel members are responsible for taking their own private notes for internal use only.

What if the other party does not attend the hearing?

It is the board's practice to wait at least 15 minutes for the other party to attend the hearing. If the other party has not arrived at the hearing or contacted the board's offices, the hearing will proceed anyway.

Analyze your case

Evidence:

Prepare an outline of the evidence and determine how you will present your evidence through your witnesses, including yourself, if you plan to testify.

Cross-examination:

Prepare a cross-examination outline which will be used for the other side's witnesses.

Closing Statements or Argument:

Prepare an outline of your closing statements or final arguments, which must be logical and describe the evidence that supports each point.

What happens during the hearing?

The practice of the board is the following:

Opening Statements

The board may ask the parties if they wish to make an opening statement. Simply tell the board about your case and the outcome you expect once the facts have been considered.

Note: You are not required to make an opening statement if you prefer not to.

Evidence

Evidence can be your own verbal testimony, the verbal testimony of other witnesses and documents submitted through a witness. The board officer will ask you for the names of your

witnesses prior to the case beginning. If you decide not to use one of your witnesses during the hearing, or if you wish to call other witnesses, please advise the board of the change.

If you have more than one witness, you may choose the order in which they are heard. When they have finished testifying, witnesses have the option to leave the hearing room or move to the back of the hearing room and quietly watch the hearing with the other observers.

Witnesses must tell the truth at the hearing. All witnesses for both parties will be asked to state their full name and swear an oath on a Bible or affirm that they will tell the truth.

When one party has finished presenting its entire case, the other party will follow the same process for all of their witnesses.

Direct Examination

Direct examination is the questioning of a witness by the party who called him or her. Direct examination is used so that the board can hear evidence in support of a party's case.

You should ask clear and direct questions of your witness to have them testify to the facts you wish to bring out. Your questions should not suggest an answer, otherwise the other party may object to your question.

You can give direct evidence on your own behalf by telling the board the facts that you believe are relevant to your case.

Cross-examination

After a witness has finished giving his or her direct examination, the opposing party is allowed to ask the witness questions.

It is a good idea to take notes about questions that occur during direct examination so you will be prepared to ask them during cross-examination.

The board panel can also ask questions of a witness to clarify matters.

Re-examination

After each witness has been cross-examined, the party who called the witness has a chance to ask further questions of the witness in order to explain or clarify testimony brought out during cross-examination. Questions asked during re-examination are limited to matters that were raised during cross-examination. It is not an opportunity to raise issues that you forgot to deal with in your direct examination. Re-examination is usually brief or a party may choose not to re-examine a witness at all.

Closing Statements or Arguments

After both sides have presented their evidence, they will take turns presenting closing statements.

A closing statement should be your interpretation of the evidence and your view of how the law should be applied to the evidence. It is not a time when you can mention new facts. In other words, you must sum up the facts presented to the board panel and explain why you believe the panel should rule in your favour.

There is no need to repeat everything that was said. You should only stress the important facts and you should mention anything that you don't agree with and the reason(s) why you disagree.

At this time, you may want to mention the connection between the evidence and the legal principles that support your closing statements. This is the point where you can submit case law. You must remember to bring six copies of any case law you provide at the hearing.

Note: The board's substantive orders and written reasons (case law) since 2007 may be viewed on the board's website at www.manitoba.ca/labour/labbrd/decisions/index.html.

What if the hearing does not finish?

The board will adjourn the hearing at an appropriate time and the board officer will arrange a future hearing date or dates with the parties.

What Happens After the Hearing?

How will I know if I won or lost my case?

The board will declare when the hearing has finished and advise the parties they are free to leave. The board panel will meet privately to decide the matter. Decisions, called orders, are sent to the parties and are based on the written and verbal information presented at hearings according to the legislation and regulations.

Do's and Don'ts at the Hearing

Do's:

- Make sure that you and your witnesses are on time for the hearing (even early if you can).
- Be respectful and polite to everyone in the boardroom, including the other party.
- Cellular phones or electronic devices **must be turned off**. No one should be recording these proceedings.
- Address the panel members and the other people in the hearing room by using their last name. For example, you should say Mr. Smith, not Joe.
- Listen carefully and speak calmly and clearly so that the panel can take proper notes.
- Take notes during the hearing so that you can respond to any issues raised by the other party when it is your turn to speak.
- Address your comments to the panel.
- If you have an objection, raise it with the panel.
- All of the parties will receive copies of documents presented to the board. If the board records these documents as exhibits, make sure that you keep the documents in order by recording the numbers assigned by the board (ex: exhibit #1).
- Remain calm and control your emotions.

Don'ts:

- It is not necessary for you to stand when the panel enters or exits the room.
- Do not interrupt or argue when the panel or the other party is speaking. Only one person may speak at a time. If you disagree with something the other party tells the panel, write it down. The panel will give you time to disagree, but only when it is your turn to speak.

- Don't use slang, unless you are quoting exactly what someone said.
- Don't argue with anyone including the panel.
- If your witness is on the stand and there is a break in the hearing, you must not contact or discuss this case with your witness until their testimony is complete.
- You must not leave the hearing room until the board adjourns the hearing.
- Don't bring food into the hearing room and don't chew gum. Water is available in the hearing room.

Created March, 2015