



# Employment Standards Tribunal

## GUIDE TO THE APPEAL PROCESS

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**Note:** This brochure provides general information about the Tribunal's appeal process. It does not explain the law, it only provides you with information on the Tribunal's processes.

Tribunal staff can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it.

The Rules of Practice and Procedure (the "Rules") can be found on the Tribunal's website at [www.bcest.bc.ca/about/rules.htm](http://www.bcest.bc.ca/about/rules.htm) or by contacting the Tribunal's office at 604.775.3512.

## OVERVIEW

The Employment Standards Act (the "Act") establishes the Employment Standards Tribunal (the "Tribunal") as an independent agency and the only body with the legal authority that can hear and decide appeals of determinations made by the Director of Employment Standards (the "Director").

A person served with a determination may appeal it to the Tribunal on one or more of the following grounds:

- the Director erred in law;
- the Director failed to observe the principles of natural justice in making the determination;
- evidence has become available that was not available at the time the determination was being made.

The burden is on the Appellant to show that the determination should be cancelled or varied in some way, or referred back to the Director.

## Who is Involved?

Appellant - means a person or entity that files an appeal with the Tribunal.

Respondent - means a person, other than the Appellant, named as a party in a determination.

Director - means the Director of Employment Standards.

Panel - means one, three, or five members of the Tribunal that have been authorized to determine appeals.

## How to make an appeal

To appeal a determination made by the Director, the Appellant must do all of the following:

- complete an Appeal Form;
- deliver the completed Appeal Form to the Tribunal;
- deliver to the Tribunal a copy of the determination that you have received from the Director and the written reasons for the determination, or a copy of the determination and a copy of your request for written reasons that has been delivered to the Director;
- confirm that a copy of the Appeal Form has been delivered to the Director; and
- provide any new evidence or information about the determination that you want the Tribunal to have.

## Time limit for filing an appeal

You must file an appeal within a time limit called the "appeal period" described in Section 112(3) of the Act, which is:

- 30 days after the date of service of the determination if you were served by registered mail; and
- 21 days after the date of service of the determination if you were personally served or served under Section 122(3) of the Act.

## Extension of appeal period

If you file an appeal after the appeal period, the Tribunal will ask you to submit a request in writing to extend the appeal period.

Your request for an extension of the appeal period must include reasons why you did not file on time. It must also include any other information the Tribunal asks for. You must deliver the request for an extension of the appeal period by the time and date given to you by the Tribunal.

If you do not deliver your request for extension within the time allowed, or if you fail to comply with the directions given, the Tribunal may dismiss the appeal without a hearing of any kind and without notifying any other party.

## Tribunal will assess the appeal

When the Tribunal receives an appeal, it will review it and decide whether it is complete and in order and if it meets the requirements of the *Act* and the Tribunal's Rules.

If your appeal does not fulfill all the requirements, the Tribunal will

- notify you that your appeal must be corrected before it will be accepted; and
- set out the time limits for you to correct the appeal and comply with any other directions.

If you fail to deliver the corrected appeal within the time allowed, the Tribunal may dismiss the appeal without holding a hearing and without notifying any other party.

If you deliver the appeal within the time allowed, the Tribunal will treat the appeal as though it had been filed on the day it was originally received rather than on the day it was corrected or completed.

## Notifying the Other Parties about the Appeal

Once the Tribunal has assessed the appeal documents, and if the appeal is not dismissed or other action taken, the Tribunal will send a letter to the Director and to the Respondent(s) which:

- acknowledges that the Tribunal has received the Appellant's appeal;
- requests the Director to provide the Tribunal with a copy of the record pursuant to Section 112(5) of the *Act*;
- invites them to respond to the appeal within a time limit; and
- provides a copy of the Appeal Form and any document accompanying the appeal.

The Tribunal will send to you (the Appellant) a copy of the letter delivered to the Director and the Respondent(s).

## How To respond to an appeal

To respond to an appeal, you (the Respondent or the Director) must:

- make the response in writing; and
- file the completed response with the Tribunal within the allowed time.

The response must contain:

- your full name and address for delivery;
- the Tribunal file number; and
- the position that you are taking in response to the appeal.

If you provide the Tribunal, in advance, with a good reason for not being able to meet the time limit for filing a response, the Tribunal may extend the time limit.

## Tribunal will assess the response

When the Tribunal receives a response, it will review it and decide whether it is complete and in order and if it meets the requirements of the *Act* and the Rules.

### *If a response does not fulfill requirements*

If your response does not fulfill all the requirements, the Tribunal will:

- notify you that your response must be corrected before it will be accepted; and
- set out the time limit for you to correct the response and comply with any other directions.

If your response is not complete or if you do not file your response within the time allowed the Tribunal may proceed to consider the appeal without notifying you.

## Final Reply

The Tribunal will provide a copy of your response to all other parties and permit them to file a final reply within a specified time limit.

The Tribunal will also provide a copy of the record received from the Director to the other parties or, alternatively, make the record available for personal inspection.

If the Tribunal makes a copy of the record available for inspection, it will notify all parties of the location of the record and the time during which it may be inspected.

If a party does not file a final reply within the time allowed, that party may not later file a final reply without the permission of the Tribunal.

## Type of Hearing

After the processes described in Parts 5 to 7 of the Tribunal's Rules, and where the appeal has not already been dismissed under Rule 12, the Tribunal will choose a method for deciding the appeal. The method may be one or any combination of written submission, electronic, and oral hearings.

### *Written Submission Hearing*

If the Tribunal decides that all or part of an appeal will be decided solely on written submissions, it will notify the parties.

### *Electronic and Oral Hearings*

If the Tribunal decides to hold an electronic or oral hearing, it will set the time, date, and place for the hearing and notify the parties.

If a party who has been notified of a hearing fails to attend, the Tribunal may proceed with the hearing and make a decision about the appeal in the absence of that party.

## Power of a Panel

The Panel hearing the appeal will determine how the hearing is to be conducted and may receive and accept evidence and information that it considers necessary and appropriate, whether or not that evidence or information would be admissible in a court of law.

## Interpreters and other Accommodations

If a party, a witness, or his or her representative requires an interpreter and/or any other accommodation, that person must notify the Tribunal at least 14 days before the date set for the hearing.

## The Decision

In coming to a Decision, the Panel will focus on the grounds of appeal. If the Panel decides a ground of appeal has been made out, an Order will be made which cancels or varies the determination, or refers it back to the Director. If not, the Tribunal will confirm the Decision.

The parties will receive a copy of the Decision when it is issued. All decisions are published by the Tribunal and are available on the Tribunal's website and through QUICKLAW.

## Employment Standards Tribunal



1066 West Hastings Street •  
Suite 650 •  
Vancouver, BC V6E 3X1 •  
Tel: 604-775-3512 •  
Fax: 604-775-3372 •

**This Appeal Form, along with required attachments, must be delivered to the office of the Tribunal within the appeal period (Suite 650, 1066 West Hastings Street, Vancouver, BC V6E 3X1 or by fax at 604-775-3372)**

1. Person or entity making the Appeal:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ Postal Code \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

2. State your Grounds for Appeal. (See Section 112(1) of the *Employment Standards Act* )  
**(Please provide your explanation on a separate sheet of paper)**

- The Director of Employment Standards erred in law.
- The Director of Employment Standards failed to observe the principles of natural justice in making the Determination.
- Evidence has become available that was not available at the time the Determination was being made. Explain.

3. Do you require a suspension of the Determination in whole or in part and if so why? (See Rule 9 of the Tribunal's Rules of Practice and Procedure) **(Please provide your explanation on a separate sheet of paper)**

4. Is this a Late Appeal? If you are filing your appeal after the appeal period has expired please provide an explanation why you did not file it in time. (See Rule 8 (4) of the Tribunal's Rules of Practice and Procedure)

- Yes. **(Please provide your explanation on a separate sheet of paper)**
- No

5. What do you want the Tribunal to do about the Determination? **(Please provide your explanation on a separate sheet of paper)**

- Change or vary it? How?
- Cancel it?
- Refer it back to the Director of Employment Standards?



6. Do you believe an oral hearing is necessary?

Yes. (Please provide your explanation on a separate sheet of paper)

No

To determine whether an oral hearing is appropriate, the Tribunal will take into account any factor it considers relevant, including but not limited to the complexity of the issues, whether each party can adequately state its case fairly without an oral hearing, and the need to process appeals efficiently.

7. Check List.

Attach a copy of the Determination.

Attach the written reasons for the Determination, if you have them.

Attach any other documents or information that supports your appeal and your detailed submission on why your appeal should be allowed.

**The Tribunal may require you to provide multiple copies of your appeal submission if it is longer than 50 pages.** (See Rule 6(4)(e) of the Tribunal's Rules of Practice and Procedure).

I confirm I have delivered a copy of this appeal to the Director of Employment Standards [PO Box 9570 Stn Prov Govt, Victoria BC V8W 9K1 or by fax at 250-356-1886] in accordance with Section 112(2)(b) of the *Employment Standards Act*.

8. Sign and date this Appeal Form. **Submit all your documents to the Tribunal within the appeal period** (by mail to Suite 650, 1066 West Hastings Street, Vancouver, BC V6E 3X1, by email to [registrar.est@bcest.bc.ca](mailto:registrar.est@bcest.bc.ca) or by fax to 604-775-3372)

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Form 1/revised December 30, 2005

