

# Guide for Appealing a Wage Assessment

Under section 2-75 of *The Saskatchewan Employment Act*

*November 2021*

**Please note:** The information in this guide is provided for illustration, information and educational purposes only.

*The Saskatchewan Employment Act* and associated regulations should be consulted for all purposes of legal interpretation and application.

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## Introduction

An employee, employer, or corporate director has a right to appeal a wage assessment issued by an employment standards officer.

This guide provides information about the process of appealing a wage assessment, and preparing for and attending an appeal hearing. This guide should be used in conjunction with [The Saskatchewan Employment Act](#) and [The Employment Standards Regulations](#).

## General Information

### **What is a wage assessment?**

A wage assessment is a legal document issued by an employment standards officer against an employer and/or a corporate director when they have failed to pay wages to an employee. A wage assessment states the amount of wages owed and who they are owed to.

A wage assessment can be served to an employer or corporate director in person, by email or through registered mail.

### **Service of a wage assessment**

Employment Standards will normally “serve” a wage assessment by e-mail. However, service may also occur in person, by registered mail, or by publication in a local newspaper.

### **Who can appeal a wage assessment?**

Appeals can be filed by an employer or corporate director who disputes their liability or amount in the wage assessment, or by an employee who disputes the amount in the wage assessment.

An appeal is not

- a court trial;
- a way to avoid complying with or paying a wage assessment.

If an employer or corporate director chooses not to appeal the wage assessment, a judgement will be filed with the Court of Queen’s Bench and enforcement action will begin.

### **Who is claimant?**

An employee or third party who files a claim or complaint with Employment Standards.

### **Who is an appellant?**

Usually, an appellant is the employer or corporate director who disputes their liability or amount in the wage assessment. However, an appellant could also be an employee who disputes the amount in the wage assessment.

Employment Standards could also be an appellant if they appeal an adjudicator or Labour Relations Board decision.

## Who is an adjudicator?

Appointed by Order in Council, an adjudicator is responsible and accountable for independently hearing appeals of a wage assessment and some findings of discriminatory action under the Act. They are usually lawyers with backgrounds in administrative law. They do not work for the Ministry of Labour Relations and Workplace Safety. Their authority is provided in the Act. After hearing the appeal, an adjudicator will decide on the appeal based on the Act, common law and the evidence presented at the hearing.

## Filing an Appeal

### When can I file an appeal?

An appeal can be filed within 15 business days from when the wage assessment is served on the employer, corporate director and employee. A ‘business day’ means a day other than a Saturday, Sunday or holiday.

### What needs to be included in the appeal?

There are specific requirements that must be met when appealing a wage assessment.

#### **An appeal filed by an employer or corporate director must include:**

**Notice of Appeal:** The notice of appeal is an indication that an employer or corporate director doesn’t agree with the wage assessment, therefore, wants it changed, amended or dismissed. The notice of appeal must state:

- the grounds/reasons for appealing the wage assessment; and
- the relief requested (i.e. the changes the employer/corporate director wants to the wage assessment).

**Deposit:** An employer or corporate director must pay a deposit when filing an appeal. The appeal deposit is the wage assessment amount to a maximum of \$500 (Regulation 37 of *The Employment Standards Regulations*). The director will return the deposit to the employer or corporate director if no wages are found owing. If the deposit amount is incorrect or the cheque received is non-sufficient funds, the appeal is incomplete.

If the appeal and deposit was not on time or is incomplete, the officer may argue at the hearing that the appeal is not eligible under the legislation. Therefore, the adjudicator wouldn’t have jurisdiction to hear the matter. If the adjudicator agrees, the appeal is dismissed, the wage assessment is maintained and the wages are still owed.

#### **An appeal filed by an employee must include:**

**Notice of Appeal:** The notice of appeal is an indication that an employee disagrees with the wage assessment, therefore, wants it changed or amended. The notice of appeal must state:

- the grounds/reasons for appealing the wage assessment; and
- the relief requested (i.e. the changes the employee wants to the wage assessment).

Employees do not need to pay a deposit when filing an appeal.

### **Where do I send my appeal?**

Appeal notices and deposits can be sent to the director of Employment Standards in Regina (see the address and fax number provided in the wage assessment documents). They may also be accepted by any Employment Standards office across the province.

Appeals can be sent in person, by registered mail or fax. Deposits may be by cheque or cash.

An appeal is considered filed only when both the notice of appeal and the deposit (if applicable) has been received by any Employment Standards office no later than the 15 business day deadline from the date the wage assessment was served.

Once received, the appeal document will be forwarded to the appeals coordinator in Regina. The appeals coordinator will then prepare the appeal documents and forward it to the Labour Relations Board to assign an adjudicator to the file.

### **Can I represent myself?**

Appellants may represent themselves or use a representative of their choosing (e.g., a lawyer). Generally, employment standards officers do not represent either party (employee/ employer). Employment standards officers represent the director of Employment Standards with the mandate of enforcing compliance with The Act.

## After an Appeal is Filed with Employment Standards

### **Processing the appeal**

When the Employment Standards appeal coordinator receives an appeal, a notice is sent to the Labour Relations Board's registrar. The registrar will assign an adjudicator who is independent from Employment Standards, and will provide the adjudicator with a copy of the wage assessment and the notice of appeal.

## Preparing for the Appeal (Adjudication) Hearing

### **Introduction**

The purpose of the hearing is to provide the appellant an opportunity to present evidence to the adjudicator as to why they believe the wage assessment is incorrect. Parties must bring supporting documents and other evidence and will have the opportunity to examine and cross-examine their witnesses and those of the other parties.

Employment standards officers do not represent any of the parties, but will make representations on behalf of the director of Employment Standards about the wage assessment at the hearing. Adjudication hearings are not court hearings but an adjudicator may decide to follow the same or similar principles as a court.

### **Scheduling the hearing**

Once the adjudicator is appointed, a date, time and place for the hearing will be set in consultation with relevant parties. The adjudicator controls the process of the hearing and will decide how to hold the hearing, whether online or in person.

**Special needs or accommodations**

Parties can notify the adjudicator or the employment standards officer in advance of any needs or services that they will require before or during the hearing (e.g. locations, accommodations, translation services). Requests will be reasonably accommodated based on operational resources.

**Adjournment or withdrawal**

Parties can request an adjournment or withdrawal from the hearing. This should be done in advance through the adjudicator. All parties must be informed of the request.

**Safety**

Most hearings are held in government meeting rooms and parties must comply with any safety rules that apply in that building.

**Attendance at hearings**

Most hearings are held in person; however, the adjudicator may decide to allow witnesses to attend by video conferencing or phone call. These arrangements must be made with the adjudicator in advance and are at the discretion of the adjudicator.

## Technical and Procedural Issues

**Case management**

Adjudicators decide the process and may hold a case management meeting before a hearing to deal with procedural issues and technical questions such as date and location of the hearing, agreed statements of facts, etc. The adjudicator decides the topic of discussion and decides if it needs to be conducted in person or can be through a teleconference or phone call.

**Attendance**

Normally, only the adjudicator, the employer, the employee, the employment standards officer, and witnesses of any parties attend hearings. Attendance by persons other than the parties to the dispute are at the discretion of the adjudicator. They are generally not public hearings and are only accessible to concerned parties, their counsel or representative, a translator, an agent for a corporation and support persons, as decided by the adjudicator. Each party is responsible for any associated costs. Others may attend with the consent of the adjudicator and the parties.

**Audio or video recording/ transcription**

Although adjudications are normally not recorded or transcribed, the adjudicator may decide to do so. If a party wants to record a hearing, consent must be granted by the adjudicator.

**Taking notes**

Parties can take their own hearing notes.

### **Oath or affirmation**

A witness who is called to testify at a hearing must swear an oath or solemnly affirm to tell the truth for their testimony to be admitted as evidence. Individuals asked to testify may swear on the Bible or another sacred text or object, or promise to tell the truth. If a sacred text or object other than the Bible is to be used by a witness, the witness should inform the adjudicator and make arrangements to bring that text or object to the hearing.

### **Failure to attend by the claimant**

If the claimant doesn't attend the hearing, their evidence may not be weighed as heavily by the adjudicator because they are not there to testify and be cross examined by the other party. Adjudicators may still allow their evidence to stand, but the evidence may not mean as much for their argument.

In some cases, the adjudicator will attempt to contact the claimant or will decide to continue the hearing as it is.

### **Failure to attend by the appellant**

In the past if the appellant failed to appear, the adjudicator has done one or more of the following:

- declared the appeal abandoned and considered the matter withdrawn;
- tried to contact the appellant to clarify intent; or
- proceeded in the absence of the appellant to hear the evidence at hand and made a decision based on the available evidence.

The adjudicator can still make a decision even if the claimant or appellant are unavailable at the hearing. Claimant and appellant attendance at hearings provides the opportunity to have all rationale and evidence reflected in the decision through their testimony. Attendance by all parties helps ensure the best case is put forward to the adjudicator.

## **The Conduct of the Hearing**

### **Preliminary matters**

At the beginning of a hearing, the adjudicator will explain the reason why the parties are there and the basic rules for the hearing. The adjudicator might also ask the parties the issues that they would like to bring forward, and this is when the parties can raise an objection concerning the adjudicators jurisdiction to hear the complaint, or other similar matters.

### **Presentation of evidence and witnesses**

At the hearing, all parties are given the opportunity to submit evidence by way of witnesses and relevant documents, and to make submissions to support their position. The adjudicator decides the process and the order the parties present their submissions. Generally, the appellant will proceed first with the presentation of their evidence while the employment standards officer goes second to defend their wage assessment. Adjudicators will often also provide claimants an opportunity to provide additional information.



Witnesses called by one party may be cross-examined by the other party. Should an employee, claimant or any party decide to testify, they may also be subject to cross-examination. Each party should bring sufficient copies of their evidence for the adjudicator and for all the other parties present at the hearing. The adjudicator can accept any information or evidence that they feel is necessary to determine the case.

### **How do I prepare my evidence?**

Research is important in preparing your evidence. Parties can refer to previous adjudication decisions relevant to their matter and can consult online legal databases such as the [Canadian Legal Information Institute \(CanLII\)](#) as a source for employment law and recent cases.

### **Types of evidence:**

Different types of evidence that can be submitted include:

- Witness testimony.
- Documentary evidence such as contracts, pay records, receipts, photographs, video, attendance records, letters, emails, text messages etc.
- Expert opinion.

### **What if I want to settle the matter?**

Any of the parties can decide to make an offer of settlement at any point in the process. If there is new evidence at the hearing, one party can ask for a brief recess to consider an offer of settlement. In some cases, the adjudicator will explore a possible settlement option with the parties if the adjudicator deems it appropriate.

### **End of hearing**

After the parties have presented their evidence, the adjudicator may provide the parties with an opportunity to summarize their evidence, position and case, and also submit a written summary or argument. The adjudicator may also ask parties to provide a subsequent written summary of their argument already presented in the hearing and how this is to be done (e.g. in writing, within a given deadline).

## **After the Hearing**

### **Decision**

The hearing gives the adjudicator the opportunity to review and consider the parties' submissions, and evidence required to understand the issue. The adjudicator can then decide to dismiss, allow, or vary the wage assessment. The adjudicator will provide reasons for their decision in writing, and usually email it to all parties.

In most instances, the adjudicator will render a written decision within 60 days after the end of the hearing. If 60-days expires without a decision been provided, either party can request a decision of the Labour Relations Board.

If the wage assessment is fully upheld there is an administrative fee assessed equal to 10 per cent of the wage assessment, with a minimum fee of \$100.00 and a maximum fee of

\$500.00. The employer or corporate directors pay the claim and the fee to resolve the matter. If the wage assessment is upheld, the initial deposit will be applied to the claim.

If the wage assessment is partially upheld there is no administrative fee and the employer or corporate director only pay the amount outlined in the decision.

If the assessment is dismissed, the deposit is returned to the appellant.

The employer, corporate director, or the employee may also file an appeal of the adjudicator's decision with the Labour Relations Board.

If there are outstanding wages owed and the employer or corporate directors do not pay the amount or appeal to the Labour Relations Board, a judgement will be filed with The Court of Queen's Bench and collection action will begin.

## Sample Notice of Appeal Template

This form should be used as a sample guide only. Appellants may use this template when filing a notice of appeal and/or deposit, or any other template of their choice to put forward their appeal as long as it meets the requirements of the legislation.

I \_\_\_\_\_  
(name of applicant)

of \_\_\_\_\_  
no. street city/town province postal code fax

Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_

hereby appeal the wage assessment number # \_\_\_\_\_ pursuant to Part II of *The Saskatchewan Employment Act*.

The appellant is: (Check the appropriate box or boxes)

An employee     An employer     A corporate director

Service of the wage assessment received on (day, month, year): \_\_\_\_\_

Identify the decision and/or wage amount (\$) being appealed: \_\_\_\_\_

In the space provided below, please clearly state the grounds/reasons for appealing.

Where necessary, please provide additional explanation on an attachment.

In the space provided below, please clearly state the relief requested.

Where necessary, please provide additional explanation on an attachment.

Deposit attached (The deposit amount can be paid by cash/cheque made out to the Minister of Finance)

Deposit amount\* (Regulation 37 of *The Employment Standards Regulations*): \$\_\_\_\_\_

*\*Amount on deposit*

*37 For the purposes of subsection 2-75(4) of the Act, the amount of deposit required from an employer or corporate director who disputes liability or the amount set out in the wage assessment is the amount set out in the wage assessment to a maximum of \$500.*

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(signature)

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(date)

## Legal Representative

If the appellant is represented by legal counsel, please also indicate the name and address for service of your lawyer.

Lawyer: \_\_\_\_\_

of \_\_\_\_\_  
no. street city/town province postal code

Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_



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***November 2021***

For more information, please contact Employment Standards at the  
Ministry of Labour Relations and Workplace Safety:

Toll Free: 1-800-667-1783

Fax: 306-306-787-4780

Mailing address:

300-1870 Albert Street  
Regina, SK S4P 4W1