

#19 COMMON EMPLOYER DECLARATIONS

I. INTRODUCTION

The *Labour Relations Code* authorizes the Board to make common employer declarations, often called "spin-off" declarations. See: Sections 47, 163.6(1).

The *Code* contains one provision for the non-construction industry and a second provision for the construction industry. The construction industry provision has some distinct features that apply only to that industry.

This Information Bulletin sets out the requirements for filing such an application. It also outlines the procedures the Board will use when processing applications.

Parts I and II of this bulletin apply to both the construction and non-construction industries. Part III applies only to construction.

II. THE APPLICATION

Trade unions or employers seeking a declaration must submit an application to the Board. Parties can apply by letter which must include:

- the name, address and telephone number of the applicant;
- the name and phone number of a contact person of the applicant;
- the names, addresses and telephone numbers of all associated or related corporations, partnerships or persons involved in the application as far as that information is available;
- details of any relationships existing or alleged to exist between the trade union and one or more of the corporations, partnership or persons involved in the application. Include any certificate numbers and details of any collective agreements;
- details of the activities, business or undertakings involved. Describe the role of each corporation, partnership or person named in the application in these activities. Identify specific projects and describe when the work occurred. Include information about equipment use and ownership, supervision of employees, and job locations. Also, include information on payroll arrangements and the payment of wages and benefits;
- any other facts supporting the allegation of common control or direction. These should include, where appropriate, corporate records from public registries;
- a statement of whether the applicant is alleging avoidance of a collective bargaining relationship, and the reasons in support of that allegation;
- any other supporting information that the applicant wishes to rely upon; and
- any reasons important for labour relations purposes and the administration of the *Code* for the Board to grant the declaration.

- a statement in a form prescribed by the Board, confirming the application has been served in a manner approved by the Board, on any parties known to be affected by the proceeding or subsequently added by the Board.

See: Rules of Procedure, Rules 5.1, 6; Bulletin 2.

The application, in its entirety, must set out allegations of fact which may result in a declaration. It need not prove the case, but must set out enough details to show genuine grounds for the application. The information must be enough to advise the respondent of the matters in dispute. *See: U.A. Local 488 v. Vikon Technical Services [1985] Alta.L.R.B. 85-073.*

III. PROCESSING THE APPLICATION

The Director of Settlement reviews all applications for completeness. The Director may refuse to process any application lacking sufficient information. In that event, the Director asks the applicant to provide further particulars or refers it to panel with a recommendation to dismiss it. *See: Bulletin 2.*

The applicant must serve a copy of the filed application on the employer and any other affected persons. Once served, the applicant must provide proof of the service to the Board on the form provided. The Board will direct how the employees will be notified, usually by posting of a notice at the worksite.

A respondent must file and serve a reply to the application unless the Director of Settlement waives the requirement. A reply must admit the facts that are not in dispute and state any different version of the facts that is relied on. *See: Rules of Procedure, Rule 8.*

No Objections

If no one contests the application, the Director of Settlement forwards it to a Board panel for review. The panel may issue a declaration without conducting a hearing.

Objections

If a party contests the application, the Director of Settlement will decide whether to recommend the matter go directly to hearing or whether pre-hearing procedures are required.

The Director may direct an Officer to attempt to settle the matter or conduct an investigation into some or all of the matters that remain in dispute. An investigation may be appropriate where, following the application and reply, it is necessary to more fully define the facts and issues in dispute. *See: Rules of Procedure, Rule 22(1)(g); Bulletin 3.*

After the investigation, the officer issues a report. The report outlines the facts in dispute. It does not include any recommendations.

If pre-hearing procedures fail to resolve the matter, the Director of Settlement schedules a hearing.

Board Hearing

Where the application proceeds to hearing, the applicant must establish the four statutory conditions in section 47(1). They are that:

- the applicant is an affected employer or trade union;
- the activities are associated or related;
- there is common control or direction; and
- there is more than one entity.

The Board must then decide whether these activities are carried on in order to avoid a collective bargaining relationship. If they are, the Board:

- must issue a common employer declaration;
 - may give a remedy effective retroactively, but only as far back as the date of the application.
- See: Sections 47(2), 163.6(1); Labourers 1111 v. Sie-Mac [1991] Alta. L.R.B.R. 847; Carpenters Locals v. Urban Scaffolding [1997] Alta. L.R.B.R. 516.*

If the Board does not find avoidance, then it must decide, based on the circumstances, whether to issue a common employer declaration, which would not be retroactive.

IV. APPLICATIONS CONCERNING EMPLOYEES IN THE CONSTRUCTION INDUSTRY

The general provisions outlined above also apply to common employer declarations in the construction industry.

However, there is one additional provision, limiting the Board's discretion, that only applies to parties in the construction industry:

Non-employers

Section 163.6(1) prevents the Board making a common employer declaration involving a corporation, partnership, person or association of persons in the construction industry that does not employ employees who perform work of the kind performed by members of the applicant trade union. In *Construction and General Workers' Union, Local 92 v. Midwest Pipeline Contractors Ltd. et al.* [1990] Alta. L.R.B.R. 579 the Board set out the way it applies section 192. Section 192 was repealed and replaced with section 163.6(1) on February 10, 2021, when certain provisions of the *Restoring Balance in Alberta's Workplaces Act, 2020* were proclaimed in force. The wording of section 163.6(1) is identical to the repealed provision, but common employer declarations in the construction industry are now contained in Division 2.1 of Part 3 of the *Code*.

[amended March 2021]

This process involves:

Step 1 - Review the 4 statutory requirements which are the same as under section 47(1).

Step 2 - If the 4 requirements are met, then decide if there is evidence of activities to avoid a collective bargaining relationship.

Step 3 - If the applicant is a trade union, examine whether the related corporate entity employs employees doing work of the kind performed by members of the trade union. If not, refuse the application.

Step 4 - If there is proof of avoidance under Step 2, make a declaration as required by section 163.6(1) and consider the appropriate relief and the effective date (retroactivity) of the order.

Step 5 - If there is insufficient proof of avoidance under Step 2, but the other requirements are met, decide whether to exercise the discretion, under section 163.6(1), to grant a declaration.

See also:

Information Bulletins 2, 3 and 4
Rules of Procedure

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