

Time Extension Applications

1.0 This Practice Direction:

- identifies the time limit for bringing an appeal to the Tribunal
- outlines how the Tribunal processes time extension applications
- identifies information that parties should include in a time extension application
- identifies Tribunal decisions to review before making a time extension application.

2.0 Time Limits for Appealing Decisions to the Tribunal

2.1 Under the Act, a notice of appeal must be filed with the Tribunal within six months of a final Board decision.¹

2.2 For final Board decisions made before January 1, 1998, a notice of appeal must have been filed with the Tribunal by June 30, 1998.²

2.3 If a party wishes to appeal a Board decision to the Tribunal after the time limit has expired, s/he must file a time extension application with the Tribunal.

3.0 Tribunal Processing of Time Extension Applications

3.1 There are five steps in processing a time extension application:

The Tribunal identifies an appeal that arrives after the time limit has expired.

3.2 Tribunal staff identify when an appeal has been received after the time limit has expired. Generally, the Tribunal counts the six months from the date on the Board decision to the date the notice of appeal is received by the Tribunal.

3.3 Where there is a Board decision and a Board reconsideration of that decision, the date of the original decision is generally used. However, where the Board has considered significant new evidence on a reconsideration or has changed the result of the original decision, the date of the reconsideration decision will be used.

1 See section 125(2) of the *Workplace Safety and Insurance Act*.

2 See section 112(3) of the *Workplace Safety and Insurance Act*.

The Tribunal asks for a time extension application.

- 3.4** If the Tribunal receives a notice of appeal more than six months after the date of the Board decision, it will send a letter stating that the notice was received late, and ask that a time extension application be filed within one month.

Sending the Tribunal a time extension application

- 3.5** A party who wants a time extension must fill out a time extension application.

- 3.6** The application includes:

- the completed Notice of Appeal form
- the applicant's letter explaining why the appeal was not filed on time and why a time extension should be granted.

- 3.7** If the party does not file a time extension application within one month after the Tribunal requests it, the Tribunal closes the time extension file and will not consider the appeal. In extraordinary circumstances the Tribunal may extend the time for filing the time extension application.

The Tribunal asks other parties to respond to the time extension application.

- 3.8** When a time extension application is received, the Tribunal notifies other parties of the application and asks them to respond within one month.

The Tribunal decides the time extension application.

- 3.9** A Tribunal Vice-Chair decides the time extension application. Normally, there is not an oral hearing. The Vice-Chair bases the decision on the correspondence on file with the Tribunal, including the application and submissions. A copy of this correspondence is provided to the parties prior to inviting their time extension submissions.

4.0 Information to Include in a Time Extension Application

- 4.1** Parties should attach all relevant information that they want the Tribunal Vice-Chair to consider because only the information sent in will be reviewed. The

Tribunal may identify previously submitted appeal information but does not review its files to see if there is material which is relevant to a time extension. The Tribunal also does not order Board files for time extension applications. Any documents from a Board file or Tribunal file should be attached to the application or response.

4.2 If any of the following information is available, it should be included in the time extension application:

- an explanation of why the Notice of Appeal was not filed in time
- evidence of earlier filing of the appeal (e.g. a fax receipt or letter)
- evidence that shows the applicant intended to appeal before the time limit ended (e.g. notice of appeal mistakenly sent to the Board rather than the Tribunal)
- unusual circumstances where the applicant was unaware of the time limit or was prevented from meeting the time limits (e.g. very serious illness or family circumstances)
- unusual delays (e.g. a significant delay in receiving the Board decision) or other Board matters that are relevant to the timing of the appeal to the Tribunal
- requests to the Board to reconsider the decision (especially if it was made within six months of the original decision).

4.3 If any of the following apply, they should be included in the application or submissions:

- whether the issue is so connected to another appeal that the Tribunal cannot reasonably decide the other appeal without considering it (e.g. the “whole person” concept applies, cross appeals)
- whether a refusal to hear the appeal could result in a substantial miscarriage of justice due to defects in prior process or clear and manifest errors
- comments about efforts made to file the appeal on time

- whether there is prejudice to a party (e.g. a witness is no longer available to testify)
- whether the case is so old that it cannot be reasonably decided.

4.4 The factors the Tribunal considers in determining a time extension application are set out in numerous WSIAT decisions, available on the Tribunal's website (www.wsiat.on.ca) or from the Ontario Workplace Tribunals Library.³

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal

³ See *Decision Nos. 1493/98I, 1522/98I2 and 248/99I*.