

HOW TO MANITOBA | CONSTRUCTION File An Unfair Labour Practice Complaint

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Employees, whether unionized or not, who want to be more informed, should refer fellow employees to this web site and may certainly download, print, copy, transmit and distribute these materials to fellow employees or any interested parties by any means whatsoever. You do not need to contact us for permission to do so.

Employers may do the same, for management training and communication purposes, whether within their organization or with other interested parties. In some situations, employers may provide these materials to their employees. However, we suggest, in the strongest possible terms, that you only do so in consultation with a labour lawyer who knows your individual situation.

Unions may do the same, for training and communication purposes, whether within their union or with other interested parties such as their Members and or non-Members they may represent.

For help, call LabourWatch TOLL-FREE at

1-888-652-2687

INTRODUCTION

At this time there is no "Employee Advisor or Ombudsman" funded by taxpayers or union dues to help you address concerns about a Union in Manitoba. If you have a problem with a Union's actions that your Employer cannot address with the Manitoba Labour Relations Board and the Union, you are expected to take it up with the Union or go to the MLRB yourself, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's conduct.

Similarly, in Manitoba, Employers are discouraged from offering assistance to you if you have concerns with the Union's actions. However, while the Employer may not pay legal fees of the Employees, there are times that Unfair Labour Practices (ULP) against the Union could be raised by an Employer. These situations are unusual so please read [Question 1](#) of the Manitoba Unfair Labour Practices FAQ in our Downloads section for more information. In fact, print and read all nine of the ULP FAQs.

While there are many sections of the Manitoba Labour Relations Act about Unfair Labour Practices, most relate to the relationship between Employers and the Union. We will only address those between Employees and the Union. The Union will provide significant help to Employees who want to file a ULP against the Employer and LabourWatch does not attempt to duplicate the information and resources available from them.

Unions are prohibited from discriminating against a person in regard to employment or a term or condition of employment, or intimidating or coercing or imposing a monetary or other penalty on a person, because of a belief that he may testify in a proceeding under the Manitoba Labour Relations Act, or because he has made or is about to make a disclosure that may be required of him in a proceeding under the Act, or because he has made an application or filed a complaint under the Manitoba Labour Relations Act, or because he has participated in or is about to participate in a proceeding under the legislation.

GET THE FORMS

The MLRB has a form (Form XIII) specifically for Employees who want to file a ULP.

As well, with any application made to the MLRB you must file a "Form A." Both of these forms are attached to this download.

COMPLETE THE FORMS

When you complete the forms, the MLRB requires that all statements should be concise statements of material facts, actions or omissions, so make sure you carefully explain everything. Use extra pages if necessary.

Specifically, the MLRB requires that the person making the complaint should detail:

- actions or omissions complained of, where and when they occurred, and the name of the person or names of the persons who allegedly engaged in or committed them but not the evidence by which the material facts, omissions or actions are to be proven (the evidence can be presented later);
- where the improper or irregular conduct constituted a violation of the Manitoba Labour Relations Act (or is contravening or violating the Act).

Form A looks cluttered but is straightforward to complete and as stated above, must accompany all filings at the MLRB.

Form XIII is even easier to complete but you must know which section of the Manitoba Labour Relations Act you claim has been contravened. We have included a list of the ULP sections of the Manitoba Labour Relations Act at the end of this document.

TIMING THE FILING OF YOUR ULP COMPLAINT

The MLRB may refuse to accept a complaint filed where, in the opinion of the MLRB you "unduly delayed" filing the complaint after the occurrence (or after the last occurrence) of the alleged Unfair Labour Practice.

So don't wait too long to file your ULP.

DELIVER YOUR FORMS

The MLRB will want you to file these documents in triplicate, the original, and two copies. When you make copies don't forget to make one of everything for your own records.

WHAT HAPPENS NEXT?

The Manitoba Labour Relations Act states quite specifically that:

Where the board finds that a party to a hearing under this section has committed an unfair labour practice it may, as it deems reasonable and appropriate and notwithstanding the provisions of any collective agreement,

- a. order a party which is an employer to reinstate in employment any employee whose employment has been terminated by reason of the unfair labour practice; or
- b. order any party which is an employer to employ any person who has been refused employment by reason of the unfair labour practice; or
- c. order any party which is a union to reinstate as a member of the union any person whose membership in the union has been terminated by reason of the unfair labour practice; or
- d. order the party to pay to any person referred to in clause (3)(b) an amount in compensation for the diminution of income or other employment benefits or other loss suffered by the person; or
- e. where the unfair labour practice interfered with the rights of any person under this Act but the person has not suffered any diminution of income or other employment benefits or other loss by reason of the unfair labour practice, order the party to pay to the person an amount not exceeding \$2,000.; or
- f. where the unfair labour practice interfered with the rights of a union, employer or employers' organization under this Act, whether or not the

- union, employer or employers' organization has suffered any loss by reason of the unfair labour practice, order the party to pay to the union, employer or employers' organization an amount not exceeding \$2,000.; or
- g. order the party to cease and desist any activity or operation which constitutes the unfair labour practice; or
 - h. order the party to rectify any situation resulting from the unfair labour practice; or
 - i. order the party to do, or refrain from doing, anything that is equitable to be done or refrained from in order to remedy any consequence of the unfair labour practice; or
 - j. do two or more of the things set out in clauses (a) to (i).

**FORM A: Memorandum of General Information
Required on all Proceedings**

Manitoba
Labour
Manitoba
Labour Board



THE LABOUR RELATIONS ACT

Short Style of Proceedings: Name of Employer: _____

Name of Union: _____

Type of Proceedings: (Certification, Unfair Labour Practice, Revocation, etc.)

Attached documents filed on behalf of _____

by _____ of _____
(address) (telephone number) (FAX number)

Office held by person filing documents: _____

Interest or status of party on whose behalf documents are filed: _____
(Employer, Intervenor, Applicant for Certification, etc.)

Brief statement of business affected employer: _____

Address of Employer: _____

_____ Telephone No. _____ FAX Number _____

Particulars of other parties directly affected (where not named above):

Name	Address	In what way interested
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CANADA: I
PROVINCE OF MANITOBA: of the
TO WIT: in the Province of
do solemnly declare

1. I am _____ of the above-named _____ and have a personal knowledge of the facts set forth in the attached hereto except where they are stated to be upon information and belief.
- *2. The facts set forth in the _____ attached hereto are true.
- *3. where stated to be upon information and belief they are to the best of my knowledge true in substance and fact and I have shown the source of my information.

*Strike out where not applicable

And I make this solemn declaration knowing that it is of the same force and affect as if made under oath and by virtue of "The Evidence Act".

SOLEMNLY DECLARED before me at the City (Town)
of _____
in the Province of _____,
this _____ day of _____, 20____,

A Commissioner of Oaths
My commission expires _____

Signature

The following are excerpts of the sections in the Labour Relations Act that define ULPs an Employee is likely to file against a Union.

14.1 Every employer, employers' organization, union or employee and every person acting on behalf of an employer, employers' organization, union or employee and every other person or organization who or which engages in strike-related misconduct commits an unfair labour practice.

19 Every union, and every person acting on behalf of a union

- (a) who, in any way, suspends, expels or penalizes a member because he has refused to engage in or refused to continue to engage in a strike that is prohibited under this Act; or
- (b) who requires an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the union as a condition of acquiring or retaining membership in the union; or
- (c) who expels or suspends an employee from membership in a union by applying to him in a discriminatory manner the membership rules of the union; or
- (d) who seeks by intimidation, fraud, or coercion, or the imposition of a pecuniary or any other penalty, to compel or induce a person to become or refrain from becoming, or to seek to be, a member or officer of a union or to deprive any person of the person's rights under this Act;

commits an unfair labour practice.

18 Every union and every person acting on behalf of a union who intimidates or coerces, or who discriminates in regard to employment, a term or condition of employment or membership in a union, against, or imposes a pecuniary or other penalty on, a person who

- (a) has testified or may testify in any proceeding under this or any other Act of the Legislature or of Parliament; or
- (b) has made or may make a disclosure that may be required of him in a proceeding under this or any other Act of the Legislature or of Parliament; or
- (c) has participated in or is about to participate in a proceeding under this or any other Act of the Legislature or of Parliament; or
- (d) has made a complaint or filed an application under this or any other Act of the Legislature or of Parliament; or
- (e) has exercised or is exercising his rights under this or any other Act of the Legislature or of Parliament;

unless he satisfies the board that he did not intimidate or coerce, or discriminate in regard to employment, a term or condition of employment, or membership in a union against, or impose a pecuniary or other penalty on, the person because of any of the reasons set out in clauses (a) to (e), commits an unfair labour practice.

24(2) Where a union is the bargaining agent for a unit, every other union, and every person acting on behalf of another union, who bargains collectively for the purpose of entering into a collective agreement, or purports to enter into a collective agreement, with an employer or with an employers' organization on behalf of, or purporting, designed or intended to be binding upon employees in that bargaining unit, commits an unfair labour practice.

30(5) Where a complaint alleging an unfair labour practice has been settled, whether through the endeavors of a board representative or otherwise, the board may issue in respect of the settlement a consent order in accordance with subsection 140(9); and every party named in the consent order which fails to comply with the terms thereof commits an unfair labour practice.