

MEDIATION CONCERNING OCCUPATIONAL HEALTH AND SAFETY AT WORK AT THE CNESST

RESOLVING A DISPUTE BETWEEN A WORKER AND AN EMPLOYER



WHO CAN FILE A COMPLAINT?

A worker may file a complaint with the Commission des normes, de l'équité, de la santé et de la sécurité au travail (CNESST) if they believe that the employer refuses to reinstate them in a position, or that they have been the victim of a sanction, discrimination or reprisal by the employer because they:

- sustained an employment injury
- exercised a right under the *Act respecting industrial accidents and occupational diseases (AIAOD)*
- exercised a right or duty recognized by the *the Act respecting occupational health and safety (AOHS)*

FILING A COMPLAINT

The worker must submit their complaint in writing to the CNESST within 30 days of the sanction or measure being imposed, and they must also send a copy of the complaint to the employer. The CNESST provides the necessary forms.

CONSIDERATION OF THE COMPLAINT

The CNESST refers the complaint to a mediator-adjudicator, who is an impartial and independent party appointed by the CNESST. The mediator-adjudicator is assigned the case and must ensure that it is resolved, while promoting mediation between the parties.

WHAT IS MEDIATION?

Mediation is a free, simple and voluntary dispute-resolution process. It gives the worker and the employer an opportunity to try to find a mutually satisfactory solution to their dispute. The mediator-adjudicator's role is to support the parties in their attempts at mediation by helping them find common ground.

WHAT HAPPENS IF THE PARTIES FAIL TO AGREE?

If the parties are unable to reach an agreement and the worker maintains the complaint, the mediator-adjudicator will then schedule a hearing and notify the parties of the date their dispute will be heard. The worker and the employer may represent themselves or be accompanied by a person of their choice, for example a lawyer or a union or management representative. Each party gives its version of the facts and is entitled to question the other party. Both parties may call witnesses and file documents. The parties are responsible for the expenses associated with the hearing and the fees of their representative, if any.

THE DECISION

After the hearing, the mediator-adjudicator must render a decision either allowing or dismissing the worker's complaint. If the complaint is allowed, the mediator-adjudicator may do the following:

- cancel the sanction
- order the employer to cease discriminating or retaliating against the worker
- order the employer to reinstate the worker in their position, in an equivalent position or in an available suitable position with all their rights and privileges
- order the employer to repay the wages and benefits the worker has been deprived of

The decision will apply notwithstanding appeal, until a final decision is rendered.

CONTESTING THE DECISION

The worker and the employer may contest the mediator-adjudicator's decision before the Administrative Labour Tribunal within 45 days of receiving the mediator-adjudicator's decision.

? To contact us: **1 844 838-0808**