



# Essential Services in Manitoba

Presentation to the labour community  
By the Manitoba Labour Board

The Manitoba Labour Board recognizes its presence on the traditional territory of the Anishinaabe, the Cree, the Oji-Cree, Dakota and Dene peoples, and the birthplace and national homeland of the Red River Métis. Our presence on this traditional land is sustained by drinking water from the community of Shoal Lake 40 First Nation in Treaty 3 territory and electricity from beyond treaty one territory including Nelson River and Treaty 5 territory. We respect all the Treaties as well as ancestral and unceded homelands of indigenous peoples. Land is sacred to indigenous peoples and acknowledging the land and territory which we are on is a long standing indigenous cultural practise. Land acknowledgements remind us whose original homelands we're on and are an important practise, to show respect for its original inhabitants, while honouring the spirit of reconciliation and as a reminder that we are all accountable to these relationships.

# Overview



Amendments to the Labour Relations Act



Replacement Workers



Essential Services Determinations



Essential Services Agreement

# Amendments to The Labour Relations Act – Replacement Workers

During a lockout or strike, the employer or a person acting on behalf of the employer, is not permitted to use replacement workers.

The prohibited use of replacement workers includes:

- persons performing or normally performing the work of an employee in the unit that is locked out or on strike;
- persons hired or engaged after the date on which notice to start collective bargaining is given and performs the work of those in the bargaining unit;
- an employee who works for the same employer and ordinarily works at another location, except if the person performs management functions primarily or is employed in a confidential capacity in matters relating to labour relations;
- an employee who is transferred to the workplace after the notice to commence bargaining is given;
- a person employed, engaged or supplied to the employer by another person; or
- an employee who works for the same employer where the lockout or strike is occurring, but they are not part of the unit in the labour dispute.

- The Act now has specific provisions regarding replacement workers.
- It sets out that it is now prohibited for an employer to use replacement workers during job action.

# Replacement workers: Exceptions



Workers performing management duties primarily or employed in a confidential capacity in matters relating to labour relations.



If, before notice to bargain was given, the employer or person acting on behalf of the employer, was using the services of a person and that work was the same or substantially the same as the work of an employee on strike or locked out, these same services may continue in the same manner, to the same extent and in the same circumstances as they did before notice was given.



Essential workers, to prevent threats to life, safety or health; destruction or of serious damage to the employer's property or premises; or serious environmental damage.

Use of replacement  
workers:  
**consequences**

The Act highlights that any employer or person acting on behalf of an employer who fails to comply with the prohibition on the use of replacement workers or the prohibition of the use of employees in the bargaining unit commits an unfair labour practice.

- There are consequences for an employer who uses replacement workers during job action.
- The ULP (Unfair Labour Practice) sections of the Act will apply.

# ESSENTIAL SERVICES - overview



The Act creates a new framework for the consideration of essential services that are required to be maintained during a lockout or strike.



The Act requires all unionized workplaces governed by the Act to determine whether there are essential services that need to be maintained in the event of a lockout or strike. If essential services are required, the parties must enter into an Essential Services Agreement.



The determination of whether there are essential services **and**, if necessary, the Essential Services Agreement need to be filed with the Board and must be concluded before there can be a legal strike or lockout.

- The Act does not prevent you at any time from coming to the Board to seek assistance by way of early Board intervention.

## Meaning of Essential Services Section 93.1(4)

“In this section, an employer and the employees in a unit are considered to provide essential services if the employer and the bargaining agent for the unit are party to an agreement entered into, or an order made under, section 94.3 (essential services) that requires one or more of the employees in the unit to continue to supply services, operate facilities or produce goods in the event of a lockout or strike.”

- It essentially states that any unionised workplace in Manitoba must turn their minds to determining if one or more employees in the unit are required to continue to supply services, operate facilities, or produce goods in the event of job action.

# ESSENTIAL SERVICES

## **MAINTENANCE OF ESSENTIAL SERVICES:**

**94.3(1)** During a lockout or legal strike, the employer, the bargaining agent for the unit of employees and the employees in the unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to

- (a) prevent a threat to the health, safety or welfare of residents of Manitoba;
- (b) maintain the administration of justice; or
- (c) prevent a threat of serious environmental damage.

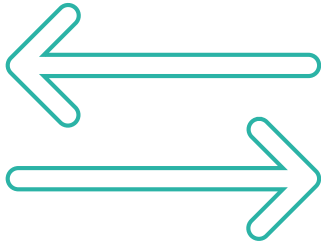
- If you're familiar with the previous legislation, you'll note that that third element, as it relates to environmental damage, is new.



# ESA EXCLUSIONS

**Section 94.6** of the *Act* provides that the provisions relating to essential services “**do not apply to employees in a unit who are prohibited from striking and the employer and bargaining agent of those employees**”.

# NEW FRAMEWORK



## **REPLACES:**

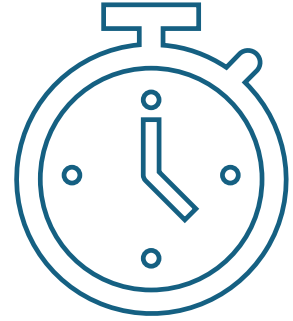
- The Essential Services Act (Government and Child and Family Services); and
- The Essential Services Act (Health Care).

These acts are repealed and any existing services agreements under those acts continue under the LRA.

- From now on, those workplaces now need to comply with the legislative provisions of the Labour Relations Act as it relates to essential services.

# TIMELINES

- **180 days** prior to the expiry of the collective agreement, you must have an agreement as to whether essential services are required in the event of a strike or lock-out.
- **90 days** prior to the expiry of the collective agreement, you must have agreed upon the terms of the essential services agreement.
- If you can't agree to either, the Board has 30 days to make the determination on the parties' behalf.



- Please note the incredibly strict timelines that are included in the Act.
- As it relates to the determination of whether there are essential services in your workplace, you will need to make that determination 180 days prior to the expiry of the collective agreement.
- 90 days prior to the expiry of your collective agreement, you must have settled an essential services agreement.
- The Board has 30 days from the date of application to make a determination on a party's behalf.

## TRANSITIONAL - Time Periods

**8(3)** If, on the coming into force of this section, a time period for applying to the Board in respect of an essential services agreement under section 94.3 of The Labour Relations Act, as enacted by section 6 of this Act, has already expired, a party to a collective agreement may proceed immediately to make an application to the board.

- There is transition language in the act relating to those whose collective agreements have expired since the introduction of this legislation, allowing parties to come to the Board at any time.

# TRANSITIONAL PROVISIONS

A party to a collective agreement may **proceed immediately** to make an application to the Board if the time periods outlined in the Act have already expired.

Parties must either **file a determination or apply for the Board to make a determination** before they can apply to the Board to settle an ESA

- For those who are caught in the middle of the timelines with respect to the enactment of the new legislation, it still must be done in sequence- the determination of essential services first and then the essential services agreement after.

## ESSENTIAL SERVICES DETERMINATION

**94.3 (2)** The parties to a collective agreement must, no later than 180 days before the expiry of that agreement,

- (a) determine whether it is necessary, in the event of a lockout or legal strike, to continue the supply of services, operation of facilities or production of goods to comply with subsection (1);
- (b) set out the determination in writing;
- (c) file a copy of the determination with the board; and
- (d) provide a copy of the determination to the minister if requested to do so by the minister.

The filed copy of the determination has the same effect as an order of the Board.

- The first issue that must be considered is the determination of whether there are essential services in your workplace. That deadline is set at 180 days prior to the expiry of your collective agreement. Six months prior to your collective agreement expiring, you must file a **joint** determination as to whether essential services exist in your workplace.
- The Board has developed a form that parties may use, or you can jointly write to the Board and let us know your determination. We will keep a record of those determinations.
- Essentially, we're asking you to tell us, are there essential services in your workplace? And then it gives us an ability to work with the parties and to ultimately offer proactive assistance. That will be important in the years to come.
- Notifying the Board when there are essential services in a workplace gives us the ability to work with parties and offer proactive assistance in future rounds of bargaining.

# ESSENTIAL SERVICES DETERMINATION

Parties must come to a written agreement, which must then be filed with the Board:

**YES**, there are essential services required to be maintained in the event of a strike or lockout

**NO**, there are no essential services required to be maintained in the event of a strike or lockout.



- If both parties agree whether there are essential services or not, your essential services determination filing is as simple as telling us yes, there are essential services or no, there are no essential services.

# ESSENTIAL SERVICES DETERMINATION

If no agreement is reached, one of the parties will need to make application for a determination to be made by the Board.

If before the 180 days prior to the expiry of the collective agreement, an application pursuant to section 142(5) of the Act may be filed.

If at or beyond 180 days, an application will need to be filed in accordance with 94.3(4) of the Act.

Under that section, the Board will have 30 days from the date of application to hear the matter, consider the issue and render a decision.

- If the parties can't agree on whether essential services exist in the workplace, one of the parties will need to make application for that determination to be made by the Board.
- If you are before the 180 days prior to the expiry of your collective agreement, we encourage you to file under section 142.5 of the Act.
- If you're at or beyond 180 days, you will need to make an application in accordance with section 94.3(4) of the Act.
- Pursuant to 94.3(15) the Board will have 30 days from the date of application to receive the information, to review, to hear the matter, to consider the issue, and render a decision.



# ESSENTIAL SERVICES DETERMINATION

Must be filed with the Board

If no essential services, the Board does not require anything further

If there are essential services, parties must proceed to negotiate an essential services agreement

- An essential services determination can be in either of two forms. The first is the joint filing where both parties agree whether essential services exist. The second is the Board order issued after an application is made to the Board to make the determination.

## SETTLEMENT OF ESA

**94.3(9)** The essential services agreement must set out the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue the supply of services, operation of facilities or production of goods, including the number of those employees that, in the opinion of the employer and the bargaining agent, would be required to comply with subsection (1).

- If essential services have been determined, the next requirement is for the parties to settle on the terms of the essential services agreement.

## TIME LIMIT TO ENTER ESA

### 94.3(8) If

- (a) the parties to a collective agreement determine under subsection (2) that it is necessary to continue the supply of services, operation of facilities or production of goods to comply with subsection (1); or
- (b) the board makes an order under subsection (5) designating the supply of services, operation of facilities or production of goods to comply with subsection (1);

then the parties to the collective agreement must, no later than 90 days before the expiry of the term of the collective agreement, enter into an essential services agreement.

- Three months prior to the collective agreement expiring, parties must file the essential services agreement that's been agreed upon by the employer and the bargaining agent.
- If you need assistance settling the agreement and you are before the 90 days, you don't need to file for the Board to settle the agreement. You can request assistance.

# ESSENTIAL SERVICES AGREEMENT (ESA)

- Must be in writing.
- Must be filed with the Board.
- Must be concluded 90 prior to the expiry of the CBA.
- Can't strike or lockout without an ESA.

## ESA - TIMELINES



# ESSENTIAL SERVICES AGREEMENT (ESA)

- Detailed Application.
- Board needs to make a determination on the terms of the ESA within 30 days of the Application.
- Parties may opt for private arbitration by making that election 2 days after the Application has been filed with the Board. A private arbitrator will be bound by the same timelines as the Board.

- You will note that the Board's application process requires a detailed submission.
- This is because there is a lot of information to sift through when considering an essential services agreement and the Board is coming to the issue fresh: it doesn't have a lot of information about your workplace, what you do, who works there, what they do, where or how they operate. This is all very relevant and important for the Board to have when considering an application for the Board to settle an essential services agreement.
- Also because the strict timelines, the Board must be able to sift through all of this documentation, to have a hearing, to consider the arguments, and render a decision within 30 days of receiving the application.
- The legislation also allows you to go to a private arbitrator for a determination of the essential services agreement.
- You'll still need to apply to the Board first, and then two days after you filing, you can make a joint election to proceed by way of private arbitration.
- The arbitrator will be bound by the same limits as the Board, including the requirement that they render a decision within 30 days after the notice application is served on the Board.



## FILING OF ESA

**94.3(10)** Immediately after entering into the essential services agreement, the employer and the bargaining agent must **file a copy of the agreement with the board**. When the agreement is filed, it has the same effect as an order of the board.

- There is an added requirement to file your essential services agreement with the Board.
- This will allow us to track the information and to get ahead of the next round of bargaining.
- There is an ongoing responsibility for parties to consider essential services before any round of bargaining.

# MINISTERIAL REFERRAL

## Section 94.3(13)



The Minister may refer to the Board any question with respect to the sufficiency of an ESA.



This determination must be made within 30 days of the referral.



## REVIEW OF ESA BY BOARD

**Section 94.3(24)** On application by the employer or the bargaining agent, or on referral by the minister, **during a lockout or legal strike**, the board may, if in the board's opinion the circumstances warrant, review and confirm, amend or cancel an agreement entered into, or a determination or order made, under this section and make any order that it considers appropriate in the circumstances.

- The Act contains other legislative provisions, such as a request for the Board to review its previous order or the Essential Services Agreement, while parties are on strike or locked out.
- If you're not locked out or on strike, parties are able to amend their essential services agreement on their own at any time.
- Even if the Board has imposed it, you are entitled to amend, but you will need to file the amended essential services agreement with the Board.

## REVIEW OF ESA BY ARBITRATOR

**Section 94.3(19)** The arbitrator who makes a determination under subsection (18) must, on application of either party **during a lockout or legal strike**, settle any matter in dispute between the parties respecting the arbitrator's determination within two days after the application being made.

If arbitrator is unable or unwilling to act and the parties cannot agree upon another arbitrator, the Board may act if the dispute is not settled by arbitration (section 94.3(20))

- A similar provision applies for the review of an essential services agreement by a labour arbitrator who has made an order regarding the essential services agreement of the parties.

## FAILURE TO COMPLY WITH ORDER

**Section 94.4(4)** Every employer, union or other person who fails to comply with subsection (1) or (3) commits an unfair labour practice.

- Section 94.4(4) stipulates that the unfair labour practises and provisions will apply in those cases where there's a failure to comply with an ESA.

## **SUBSTANTIAL INTERFERENCE** with collective bargaining

**94.5(3)** If the board makes an order under subsection (2),

- (a) clauses 87.3(1)(a) to (c) apply the day after the order is made; and
- (b) subsections 87.3(2) to (7) apply, with necessary changes, for the purpose of settling the matters in dispute.

**94.6** Sections 94.3 to 94.5 do not apply to employees in a unit who are prohibited from striking and to the employer and bargaining agent of those employees.

- A party can apply to the Board for a determination of substantial interference with collective bargaining.
- If the Board does find that there is substantial interference, the Board may settle all matters remaining in dispute between the parties.
- This needs to be considered in the context of the prohibition on the use of replacement workers during a strike or lockout, including the prohibited use of employees in the bargaining unit.



# MANITOBA LABOUR BOARD PROCESSES

## Get Started

Labour  
Immigration  
Manitoba Labour Board  
About Us  
Board Members  
Forms

## Essential Services

Guide to The Labour Relations Act (PDF)  
Preparing for Your Hearing  
Information Bulletins  
Manitoba Labour Board's Arbitrators List  
Manitoba Labour Board's Conciliators and Grievance Mediators List  
Appointing Conciliators and Grievance Mediators  
Written Reasons for Decision & Substantive Orders  
Index of Written Reasons  
Labour Relations Act  
Regulations  
Library  
Publications

## Essential Services

The *Labour Relations Act* has been amended to create a new framework for essential services. These changes apply to all unionized workplaces governed by The *Labour Relations Act*, including private businesses. It does not apply to non-unionized workplaces, federally regulated workplaces and those who are not permitted to strike under other legislation or pursuant to the terms of their collective agreement.

Unionized workplaces are required to determine whether there are essential services that need to be maintained in the event of a strike or lockout 180 days prior to the end of their collective agreement (6 months prior) and file this determination with the Manitoba Labour Board. Workplaces that have determined that essential services are required in the event of a strike or lockout must enter into an essential services agreement 90 days prior to the expiry of their collective agreement that establishes a plan for the maintenance of essential services. These essential services agreements must also be filed with the Manitoba Labour Board.

The Manitoba Labour Board has designed a comprehensive set of Rules, Forms and an Informational Bulletin to help parties in navigating these changes.

Parties are encouraged to contact the Board if they have any questions about the process.

- [Informational Bulletin — Essential Services](#)
- [The Manitoba Labour Board Rules of Procedure — Essential Services](#)
- [Determination of Essential Services — Joint Party Filing](#)
- [ES-1 Determination if an Essential Service Exists — Application](#)
- [ES-1R Determination if an Essential Service Exists — Reply](#)
- [ES-2 Settlement of an Essential Services Agreement — Application](#)
- [ES-2R Settlement of an Essential Services Agreement — Reply](#)
- [ES-3 Substantial Interference Determination — Application](#)
- [ES-4 Review of Essential Services Agreement during Lockout/Legal Strike — Application](#)

- The website is comprehensive, and it shows what is needed to have the Board get involved.
- Please note that there is an information bulletin and the Board's new rules.
- The Information Bulletin walks through everything in detail.
- Because the provisions in the Act are so different than a normal labour relations case, the Board had to develop a new set of rules specifically for the essential services provisions.

# BEFORE YOU APPLY TO THE BOARD

**1. Board Representatives** can be appointed at any time

**2. The Board will accept applications** to determine questions under 142(5) of *The Labour Relations Act*

**3. Informational bulletin – Essential Services**

- The Board is prepared to appoint representatives under its general power at any time. They will provide mediation and conciliation services for any issue related to the Essential Services Act.
- If parties know early in the process that they have questions about essential services requiring the Board to make a determination, the Board will accept applications under 142(5) of the Labour Relations Act at any time. The timelines outlined in the Act for essential services are short. Using this section allows the Board to follow its regular procedure, taking more time to come to a decision.
- Read the Informational Bulletin on Essential Services and call the Board with any questions you may have.

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# ESSENTIAL SERVICES APPLICATIONS

1. Determination if Essential Services Exist

2. Settlement of an ESA

3. Substantial Interference Determination

4. Review of an ESA during a strike or lockout

5. Impose CBA

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There are five main types of applications that can be filed about essential services.



# APPLICATION PROCESS FOR ESA

- 1 Detailed Application with all direct evidence provided by affidavit.  
Application must be served on the respondent before filed with the Board.
- 2 Respondent must file the Reply within **3 business days**.  
Reply must use the form.  
May include affidavit evidence and must be served upon the applicant before filed with the Board.
- 3 Case Management Conference will be scheduled for the **4<sup>th</sup> business day following** the filing of the application.
- 4 Hearing will commence no later than **14 calendar days** following the filing of the application.
- 5 **Board's decision should be issued within 30 days of application.** Parties may request reasons for the decision if necessary.

- Each of the five essential service application types follow a similar process and timeline, which is less flexible than all other types of applications before the Board.
- Parties must answer all the questions and file all the documents required on the application form or reply form (if applicable).
- All direct evidence on which the applicant intends to rely must be provided by affidavit and the affiant must be available for cross examination.
- Incomplete applications will not be accepted.
- The Board may not accept the filing of additional evidence.
- The application must be served on the respondent, and the reply also must be served on the applicant.
- The Board is unlikely to provide any extensions of time. Availability of council will not be considered a reason for an extension.
- In all cases, (Determination if an ESA Exists, Settle an ESA, Substantial Interference) the Board will immediately appoint a Board representative to work as a mediator.
- The Board is strongly in favour of the parties reaching a negotiated settlement through either the assistance of a mediator or on their own instead of the Board settling the dispute.

## Determination ORDER

**94.3(5)** If, on an application made under subsection (4), the board is of the opinion that a lockout or legal strike could result in a failure to comply with subsection (1), the board may, by order,

(a) designate the supply of services, operation of facilities and production of goods that it considers necessary to ensure compliance with subsection (1); and

(b) impose any measure that it considers appropriate for carrying out the requirements of this section.

- If parties cannot agree whether essential services must be maintained during a strike or lockout they can apply to the Board for a determination.
- The Board will determine the supply of services, operational facilities and production of goods that it considers necessary to maintain essential services. This requires specific details that are outlined on the application and reply forms.

# ES-1 Determination Application- Essential Services

**MANITOBA LABOUR BOARD**  
Suite 100, 6<sup>th</sup> Floor – 170 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
T 204 945-2089 F 204 945-1296  
[www.manitoba.ca/labour/laborg](http://www.manitoba.ca/labour/laborg)  
[ML.Registrar@gov.mb.ca](mailto:ML.Registrar@gov.mb.ca)

## ES-1 DETERMINATION APPLICATION ESSENTIAL SERVICES

(Section 94.3(4) of the Labour Relations Act)  
Pursuant to Rule 29.9 of the Rules of Procedure

Employer:

Bargaining Agent:

Filed by:  Select One

**Complete all sections of this form and include requested attachments.**

❖ You must submit a FORM A with this application.

The party submitting this Application for the determination of whether essential services exist must serve a copy of the Application on the other party of the Collective Agreement prior to filing with the Board and shall indicate to the Board at the time of filing what provision has been or is being made to affect such service.

**A failure to provide all the required information or to serve the other party shall result in a rejection of the Application by the Board.**

### Collective Agreement

Term of current Collective Agreement:  to

❖ Attach copy of agreement

This is a first collective agreement

### Description of Employer

Brief Description of Employer's business:

1

### Manitoba Labour Board

Provide a list of all locations and facilities of the Employer relevant to the employees covered by this collective agreement:

### Description of Bargaining Unit and Employees

Number of employees currently in the bargaining unit:

- Certificate No.:   
 Voluntary recognition

Current Bargaining Unit Description:

1. Is an essential service agreement required?

- No**, the applicant is of the opinion that an essential services agreement is not required  
 **Yes**, the applicant is of the opinion that an essential services agreement is required because a strike or lockout would result in a failure to: (check all that apply)

- Prevent a threat to the health, safety or welfare of residents of Manitoba  
 Maintain the administration of justice  
 Prevent a threat of serious environmental damage

ES-1 Determination Application - Essential Services

2

- You must file the current collective agreement.
- The Board will reject applications that do not provide the specific details requested.

# ES-1 Determination Application- Essential Services

## Manitoba Labour Board

2. The Applicant intends to rely upon the following material facts in support of its position.

[Redacted]

3. Please list the supply of services, operations of facilities or production of goods believed necessary to ensure essential services are maintained in the event of a strike of lockout, if applicable.

[Redacted]

### **Affidavit Evidence**

The Applicant confirms that the material facts in support of its position are set out in the affidavits filed with this application. The Affiants shall be made available for cross examination at any hearing.

❖ Attached Affidavit(s) sworn by:

[Redacted]

## Manitoba Labour Board

### **AFFIDAVIT OF SERVICE**

A completed copy of this application has been provided to the respondent on [Redacted]

Provided to: [Redacted]

(name and title of recipient)

Delivery Method: **Select One** [Redacted]

Address of delivery: [Redacted]

Served by: [Redacted]

(name and title)

Signature [Redacted]

### **Document Checklist**

<input type="checkbox"/>	Form A
<input type="checkbox"/>	Collective Agreement
<input type="checkbox"/>	Affidavit evidence

- Note the Document checklist here on the bottom of the fourth page.

# ES-1R Determination Application Reply - Essential Services

MANITOBA LABOUR BOARD  
Suite 500, 5<sup>th</sup> Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
T: 204 945-2089 F: 204 945-1295  
[www.manitoba.ca/labour/5000/](http://www.manitoba.ca/labour/5000/)  
[MLRRegistrar@gov.mb.ca](mailto:MLRRegistrar@gov.mb.ca)

## ES-1R DETERMINATION APPLICATION REPLY ESSENTIAL SERVICES

Pursuant to Rule 29.13(1) of the Rules of Procedure

Employer: [REDACTED]  
Bargaining Agent: [REDACTED]  
Case No.: [REDACTED]

❖ You must submit a **FORM A** with this application.

❖ Please attach documents providing the information requested below.

1. Identify the position or material facts filed by the applicant that the respondent **agrees** with.
2. Identify any position or material facts filed by the applicant that the respondent does **not agree** with.
3. **In support of its response, the responding party relies on the following material facts:** (Include all material facts upon which you intend to rely. **Please note** that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the response and filed promptly as required by the Board's Rules of Procedure, except with the permission of the Board.)
4. Describe your position on the need to have an Essential Service Agreement.
5. Describe in detail any additional issues that the respondent believes **remain outstanding** between the parties.
6. Other relevant statements.

1

## Manitoba Labour Board

### Affidavit Evidence

If possible, attach affidavit evidence in support of your position. If attached, the respondent confirms that the material facts in support of its position are set out in the affidavits filed with this reply. The Affiants shall be made available for cross examination at any hearing.

❖ Attached Affidavit(s) sworn by:

[REDACTED]

### AFFIDAVIT OF SERVICE

A completed copy of this reply has been provided to the applicant on [REDACTED]

Provided to: [REDACTED]

(name and title of recipient)

Delivery Method:

Address of delivery: [REDACTED]

Served by: [REDACTED] Signature: [REDACTED]

(name and title)

ES-1R Determination Application Reply - Essential Services

2

- The reply form is simple but detailed.
- What do you agree with? What do you disagree with?
- What material facts you intend to rely upon at the hearing?
- What is your position on the need to have an essential services agreement?

# ES-2 Settlement Application - Essential Services

**MANITOBA LABOUR BOARD**  
 Suite 500, 5th Floor - 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
 T 204 945-2089 F 204 945-1295  
[www.manitoba.ca/labour/labour.html](http://www.manitoba.ca/labour/labour.html)  
[MLB.Registrar@gov.mb.ca](mailto:MLB.Registrar@gov.mb.ca)

## ES-2 SETTLEMENT APPLICATION ESSENTIAL SERVICES

Pursuant to 29.9 of the Rules of Procedure

Employer:   
 Bargaining Agent:   
 Filed by:

Complete all sections of this form and include requested attachments.

❖ You must submit a FORM A with this application.

The party submitting this Application for the Settlement of an Essential Services Agreement ("ESA") must serve a copy of the Application on the other party of the Collective Agreement prior to filing with the Board and shall indicate to the Board at the time of filing what provision has been or is being made to effect such service.

**A failure to provide all the required information or to serve the other party shall result in a rejection of the Application by the Board.**

### Collective Agreement

Term of current Collective Agreement:  to

❖ Attach if not already on file with the Board

### Determination that essential services exist

Filled with the Board on:

Settled by the Board on:

❖ Attach a copy of the determination that essential services exist

### Description of Employer

Brief Description of Employer's business:

1

### Manitoba Labour Board

Provide a list of all locations and facilities of the Employer relevant to the employees covered by this collective agreement:

### Description of Bargaining Unit and Employees

Number of employees currently in the bargaining unit:

Certificate No.:

Voluntary recognition

Current Bargaining Unit Description:

### Transitional provisions

This section applies to parties that have already commenced bargaining and or job action.

Have the parties attempted to resolve their ESA, either on their own or with the assistance of a third party? Yes  No

Has the Employer locked out employees? Yes  No

Is the bargaining agent already on strike? Yes  No

Has a strike vote been taken? Yes  No

Strike/lockout started:

### ESA Negotiation History

Briefly describe the efforts that the parties have made to reach an agreement on ESAs

Negotiation of an ESA began on:

Date of last meeting:

The parties have not reached agreement on any provisions of the ESA

The parties have reached agreement on any provisions of the ESA

❖ Attached are the agreed to provisions of the ESA

Have the parties been meeting with a mediator or conciliator? Yes  No

ES-2 Settlement Application - Essential Services

2

- The second type of application is the settlement of an essential services agreement.
- The application will be rejected if it is incomplete.

# ES-2 Settlement Application - Essential Services

## Manitoba Labour Board

### Outstanding Issues:

The ESA must set out the manner and extent to which the supply of services, operation of facilities or the production of goods shall be continued and the number of employees required to maintain essential services in the event of a strike or lockout.

❖ Attach a detailed description of the issues that remain outstanding between the parties including:

- The classifications in the bargaining unit that the parties **disagree** are necessary to maintain essential services during a strike or lockout.
- The staffing levels, including the number of employees that the parties **disagree** are required to maintain essential services in the classifications in dispute.
- The duties of the employees who work in those classifications (Job Description).
- The regular number of full-time, part-time and casual employees in those classifications.
- The regular weekday, weekend and general holiday staffing levels of the employees in those classifications.
- Any **disagreement** between the parties about the manner and extent of the use of managerial employees or other persons the employer was using to perform the same or substantially the same work of those in the bargaining unit employed before the notice to commence collective bargaining was given, during a strike or lockout.

❖ Attach an **employer organizational chart** regarding the work of the bargaining unit.

❖ Attach the **number and classification of managers** the employer intends to deploy.

❖ Attach the **number and classification of other persons** who would not be considered replacement workers under the Act.

If the Applicant is unable to provide the above information, when was it requested from the Respondent:

❖ **Applicant Position**

Please provide your position on the facts and circumstances of the issues in dispute and any other relevant information. You must confirm that it is your position that the resolution of the identified issues in dispute and the agreed to provisions of the ESA would ensure that a strike or lockout would provide the supply of services, operation of facilities and production of goods to maintain essential services.

## Manitoba Labour Board

### Affidavit Evidence

The Applicant shall rely only on the attached Affidavit evidence in support. The Affiants shall be made available for cross examination at any hearing.

❖ Attached Affidavit(s) sworn by:

Hearing preference: Select One

Hearing Location if in person:

Estimated length of the hearing:

### AFFIDAVIT OF SERVICE

A completed copy of this application has been provided to the respondent on Provided to:

(name and title of recipient)

Delivery Method: Select One

Address of delivery:

Served by:

Signature:

(name and title)

### DOCUMENT CHECKLIST

<input type="checkbox"/>	Form A
<input type="checkbox"/>	Collective Agreement (if not already on file with the Board)
<input type="checkbox"/>	Determination that essential services exist
<input type="checkbox"/>	Agreed to provisions of the ESA including chart of duties to be performed, classifications effected and scheduling provisions
<input type="checkbox"/>	Detailed description of outstanding issues
<input type="checkbox"/>	Organization Chart
<input type="checkbox"/>	Classification and number of managers
<input type="checkbox"/>	Classification and number of excluded staff expected to be utilized during a strike or lockout
<input type="checkbox"/>	Applicant position
<input type="checkbox"/>	Affidavit evidence

- What is the hearing preference? In-Person, Virtual? Hybrid? Document review?
- Detailed list of documents is required (see page 4 of the application form).

# ES-2R Settlement Application Reply - Essential Services

**MANITOBA LABOUR BOARD**  
 Suite 500, 5<sup>th</sup> Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
 T 204 945-2089 F 204 945-1296  
[www.manitoba.ca/labour/llb/llb.html](http://www.manitoba.ca/labour/llb/llb.html)  
[llb@opm.gov.mb.ca](mailto:llb@opm.gov.mb.ca)

## ES-2R - SETTLEMENT APPLICATION REPLY ESSENTIAL SERVICES

Pursuant to Rule 29.13(1) of the Rules of Procedure

Employer: [Redacted]  
 Bargaining Agent: [Redacted]  
 Case No.: [Redacted]

❖ You must submit a **FORM A** with this application.

- The respondent confirms that:
 

Yes	No	
<input type="radio"/>	<input type="radio"/>	The <b>Collective Agreement</b> on file with the Board is current.
<input type="radio"/>	<input type="radio"/>	You confirm that the <b>agreed to provisions</b> filed with the application are correct.
<input type="radio"/>	<input type="radio"/>	The <b>bargaining unit description</b> and number of employees in the unit outlined in the application are correct.
<input type="radio"/>	<input type="radio"/>	The <b>issues identified</b> by the applicant are in dispute.

Please attach documents providing the information requested below.

- Please provide the respondent's position on any of the "No" responses to point 1.
- Please provide your position on the issues indicated in **dispute** and any other relevant information.
  - You must confirm that it is your position that the resolution of the identified issues in dispute and the agreed to provisions of the essential services agreement would ensure that a strike or lockout would provide the supply of services, operation of facilities and production of goods to maintain essential services.
  - Identify all **material facts** upon which you intend to rely. (Please note that you may not be allowed to present evidence or make any representations about any material fact that was not set out in the Reply and filed promptly as required by the Board's Rules of Procedure, except with the permission of the Board.)
- Describe in detail any additional issues that the respondent believes **remain outstanding** between the parties.

1

## Manitoba Labour Board

- If not provided by the Applicant, please provide:
  - The staffing levels, including the number of employees that the parties disagree are required to maintain essential services in the classifications in dispute.
  - The duties of the employees who work in those classifications (Job Description)
  - The regular number of full-time, part-time and casual employees in those classifications
  - The regular **weekday, weekend and general holiday** staffing levels of the employees in those classifications.
  - Organizational chart regarding the work of the bargaining unit.
  - Number and classification of managers the employer intends to deploy.
  - Number and classification of other persons who would not be considered replacement workers under the Act.

### Affidavit Evidence

If possible, attach affidavit evidence in support of your position. If attached, the respondent confirms that the material facts in support of its position are set out in the affidavits filed with this reply. The Affiants shall be made available for cross examination at any hearing.

❖ Attached Affidavit(s) sworn by:

[Redacted Signature]

### AFFIDAVIT OF SERVICE

A completed copy of this reply has been provided to the applicant on [Redacted]

Provided to: [Redacted]

Delivery Method: **Select One** [Redacted]

Address of delivery: [Redacted]

Served by: [Redacted] Signature: [Redacted]

(name and title)

ES-2R Settlement Application Reply - Essential Services

2

- The reply to an application for the Settlement of Essential Services asks for everything that the replying party has that the applicant didn't have.
- The reply needs to be complete, all the questions need to be answered, and it needs to be filed within three days of the application being served.



# ES-3 Substantial Interference Application

**MANITOBA LABOUR BOARD**  
Suite 500, 9<sup>th</sup> Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
T 204 945-2089 F 204 945-1296  
[www.manitoba.ca/labour/landro](http://www.manitoba.ca/labour/landro)  
[ML.ESServices@gov.mb.ca](mailto:ML.ESServices@gov.mb.ca)

## ES-3 SUBSTANTIAL INTERFERENCE APPLICATION

### ESSENTIAL SERVICES

(Section 94.5(1) of The Labour Relations Act)

Pursuant to 29.16 of the Rules of Procedure

Employer:

Bargaining Agent:

Filed by:

❖ You must submit a FORM A with this application.

❖ Attach Collective Agreement if not already on file with the Board

Yes No

Has collective bargaining begun?

Have the parties engaged a conciliator or mediator?

❖ Attach a statement describing the manner and extent to which the essential services agreement has the effect of substantially interfering with meaningful collective bargaining.

### AFFIDAVIT OF SERVICE

A completed copy of this application has been provided to the respondent on

Provided to:

(name and title of recipient)

Delivery Method:

Address of delivery:

Served by:  Signature:

(name and title)

**Please Note:** Should the application be successful the bargaining agent or the employer may immediately file "ES-2 Settlement Application - Essential Services" pursuant to 94.3(17) to have the Board or an arbitrator settle the terms of the Collective Agreement.

1

- A Substantial Interference Application is used if a party wants the Board to determine that the Essential Services Agreement would substantially interfere with collective bargaining because of it limits the effectiveness of a strike or lockout.
- A determination that substantial interference exists will terminate any strike or lockout and allow the parties to apply under 87.3 for the Board to settle the collective agreement.

# ES-4 Review Application During Lockout or Legal Strike

**MANITOBA LABOUR BOARD**  
Suite 500, 5<sup>th</sup> Floor – 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8  
T 204 945-2089 F 204 945-1296  
[www.manitoba.ca/labour/llb.html](http://www.manitoba.ca/labour/llb.html)  
[MLBRegistrar@gov.mb.ca](mailto:MLBRegistrar@gov.mb.ca)

## ES-4 REVIEW APPLICATION DURING LOCKOUT OR LEGAL STRIKE

### ESSENTIAL SERVICES

(Section 94.3(20) and 94.3(24) of the Labour Relations Act)

Employer:

Bargaining Agent:

Filed by:  Select One

Date Legal Strike or Lockout began:

Is this request made jointly with the Responding party? Yes  No

❖ You must submit a FORM A with this application.

❖ Attach Collective Agreement if not already on file with the Board.

❖ Attach a document stating what circumstances have prompted the request for review of the Essential Services Agreement.

❖ Attach a document stating which specific provisions of the Essential Services Agreement you wish to have the Board review.

#### AFFIDAVIT OF SERVICE

A completed copy of this application has been provided to the respondent on

Provided to:

(name and title of recipient)

Delivery Method:  Select One

Address of delivery:

Served by:

(name and title)

Signature: 

Have the provisions the applicant wishes to have reviewed been discussed with the Respondent or with a conciliator/mediator? Yes  No

1

- The process for a review of an essential services agreement is the same as the other applications, but a strike or lockout must have commenced.
- If there is not a strike or lockout, you can apply for review and reconsideration using the Board's normal process. This might occur if the parties have a disagreement about a possible amendment to their essential services agreement.

# IMPOSE A COLLECTIVE AGREEMENT

## **Order**

**94.5(2)** If the board finds that the manner and extent to which the employer or the employees in the unit must continue the supply of services, the operation of facilities or the production of goods, as ordered, has the effect of substantially interfering with meaningful collective bargaining, the board may order that all matters remaining in dispute between the parties be settled.

## **Application**

**94.5(3)** If the board makes an order under subsection (2),

- (a) clauses 87.3(1)(a) to (c) apply the day after the order is made; and
- (b) subsections 87.3(2) to (7) apply, with necessary changes, for the purpose of settling the matters in dispute.

- If the Board determines that the ESA substantially interferes with meaningful collective bargaining either party can apply to have the Board settle the terms and conditions of the collective agreement.

# IMPOSE A COLLECTIVE AGREEMENT

## Settlement

**87.3(1)** If the board determines under subsection 87.1(3) that the party making an application under subsection 87.1(1) is bargaining in good faith but that a new collective agreement is unlikely to be concluded within 30 days if the parties continue to bargain,

(a) the employees shall immediately terminate any strike;

(a.1) the employer shall immediately terminate any lockout;

(b) the employer shall reinstate the employees as provided for in subsection 87(5); and

(c) the provisions of a collective agreement between the parties shall be settled

(i) by an arbitrator, if the parties serve a notice of their wish for arbitration under subsection (2), or

(ii) by the board within 90 days of its finding, in any other case.

- The parties can go to an arbitrator of their own choice, or the Board will settle that collective agreement within 90 days.
- The hope is that parties will settle these on their own, but if they need to come to the Board, they need to come to the Board prepared.

# QUESTIONS



- Contact the Board at 204-945-3783 or by email at [mlb@gov.mb.ca](mailto:mlb@gov.mb.ca) with any questions or requests for assistance. The Board wants to assist parties in any way possible to allow for a negotiated settlement.
- The application process has short and inflexible timelines.
- Preparation before submitting an application will be key to a successful outcome.