



## Practice Direction #15

### Time Extension Applications

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#### 1.0 This Practice Direction

- explains the time limit to appeal to the WSIAT
- outlines how the WSIAT processes time extension applications
- lists information that must be included in a time extension application
- includes the factors the WSIAT considers when making time extension decisions

#### 2.0 Time Limits to Appeal Decisions to the WSIAT

- 2.1 The WSIAT must receive an appeal within 6 months of the date of the final Workplace Safety and Insurance Board (WSIB) decision.
- 2.2 If the appeal is received after 6 months, it is considered late. The WSIAT must first decide to extend the time limit before it will hear the appeal.
- 2.3 A party must file a time extension application to request that the WSIAT extend the time limit to appeal.

#### 3.0 Date the WSIAT Uses to Determine if an Appeal is Filed Late

- 3.1 Generally, the WSIAT counts 6 months from the date on the final WSIB decision to the date it receives notice of an appeal.
- 3.2 The date of the original final WSIB decision is generally used. If the WSIB considered significant new evidence or changed the original decision, the date of the reconsidered decision will be used.

#### 4.0 Filing a Time Extension Application

- 4.1 The WSIAT will send you a letter stating that your notice of appeal was received late. WSIAT staff will ask you to file (send the WSIAT) a time extension application if you still want to appeal.

- 4.2 You have **4 weeks** to send the WSIAT your time extension application.
- 4.3 If you do not send the WSIAT your time extension application within **4 weeks**, the WSIAT will close your file.

## **5.0 Respondents**

- 5.1 The WSIAT will determine who has an interest in your time extension application and send them a copy of your application. The WSIAT will invite them to participate in the application as a respondent.
- 5.2 If an employer or worker responds and wants to participate, they become a participating respondent to the application. They will have **4 weeks** to respond to the application.
- 5.3 If an employer or a worker responds and does not want to participate, WSIAT staff will confirm this in writing. The WSIAT will not send them any additional information except the final WSIAT decision about the time extension.
- 5.4 If an employer or a worker does not respond, the WSIAT assumes they are not participating in the application. WSIAT staff will confirm this in writing. The WSIAT will not send them any additional information except the final WSIAT decision about the time extension.

## **6.0 Deciding the Time Extension Application**

- 6.1 Time extension applications are decided by hearings in writing. The Vice-Chair bases their decision on the information in the time extension file. This includes the application and response to the application. There is no oral hearing.
- 6.2 The decision number for a time extension to appeal decision at the WSIAT will end in an "E".
- 6.3 If the WSIAT grants the extension of time, it will hear the appeal.
- 6.4 If the WSIAT denies the extension, it will not hear the appeal. The WSIAT will close the file.

## 7.0 Information to Include in a Time Extension Application

7.1 A time extension application must include

- the completed Notice of Appeal Form
- a copy of the final Workplace Safety and Insurance Board (WSIB) decision being appealed
- a letter explaining
  - why the appeal was not filed on time and
  - why a time extension should be granted

7.2 Parties should consider including an affidavit or signed statement. It should explain the delay.

7.3 The WSIAT does not request or review Workplace Safety and Insurance Board (WSIB) files to see if there is relevant material to a time extension. Any relevant documents should be attached to the application or response. These could be from the WSIB claim file. These could also be from a Workplace Safety and Insurance Appeals Tribunal (WSIAT) file.

7.4 Parties should include the following in the time extension application (if available)

- a. evidence of an earlier filing of the appeal (for example, an E-File confirmation number)
- b. evidence that shows that the applicant intended to appeal before the time limit ended (for example, notice of appeal mistakenly sent to the WSIB)
- c. evidence of unusual circumstances where the applicant was unaware of the time limit or was prevented from meeting the time limits (for example, very serious illness or family circumstances)
- d. evidence of unusual delays (for example, a significant delay in receiving the WSIB decision)
- e. requests to the WSIB to reconsider the decision (especially if it was made within 6 months of the original decision)
- f. evidence on the merits of the proposed appeal (if there is an arguable case)

## **8.0 Factors the WSIAT Considers in a Time Extension Application**

### 8.1 The factors the WSIAT considers include

- a. if the applicant showed an intent to appeal within the time limit
- b. the length of the delay in filing
- c. the explanation for the delay in filing
- d. any prejudice to the responding parties caused, prolonged or made worse by the delay in filing
- e. if the issue is so connected to another appeal that the WSIAT cannot reasonably decide the other appeal without considering it
- f. if a refusal to hear the appeal could cause an unjust outcome (this could be due to errors in the original decision)
- g. if there is prejudice to a party (for example, a witness is no longer available to testify)
- h. whether the case is so old that it cannot be reasonably decided
- i. the merits of the proposed appeal (to see if there is an arguable case)

## **9.0 References and Resources**

### 9.1 **Legislative Authority**

*Workplace Safety and Insurance Act, 1997*, sections 112(3) and 125(2) (sections on time limit to appeal to the WSIAT)

### 9.2 **Decisions**

*WSIAT Decision No. 978/18E* (factors to consider in considering a request for a time extension)

*Laski v. Laski*, 2016 ONCA 337 (CanLII) (factors to consider in a request for a time extension)

*Cunningham v. Hutchings*, 2017 ONCA 938 (CanLII) (holistic approach to determine the justice of the case in deciding time extension)

### 9.3 **Related Practice Directions**

#1 – How to Start an Appeal at the WSIAT

#35 – Calculation of Time

#36 – Delivery and Filing Documents