



Novel Coronavirus (COVID-19)

Employment & Labour

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New Developments in Ontario Health Care due to COVID-19

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Province of Ontario Suspends Collective Agreement Provisions in Hospital and Long Term Care Sector

As a result of the state of emergency that was declared on March 17, 2020, the Provincial Government issued an Order under the Emergency Management and Civil Protection Act on March 21, 2020 which applied to hospitals and psychiatric facilities (“Health Service Providers”) and which effectively allows Health Service Provider to suspend certain provisions in collective agreements with trade unions.

Pursuant to the Order, Health Service Providers are authorized to deploy staff as they deem necessary in order to respond to, prevent and alleviate the outbreak of COVID-19 for patients.

This includes the right to:

- (i) identify staffing priorities, and the right to redeploy staff within different locations in or between facilities
- (ii) the right to change work assignments including the right to assign work to non-unionized staff and/or to contractors
- (iii) the right to change work schedules/assignments
- (iv) the right to defer/cancel vacations, leaves of absence regardless of whether such vacations or leaves are established by statute, agreement or otherwise
- (v) the right to employ extra part-time or temporary employees or contractors to perform bargaining unit work
- (vi) the right to use volunteers to perform work which may include bargaining unit work

The order expressly provides that a Health Care Provider may implement redeployment plans without having to comply with collective agreement provisions, including lay-off, seniority/service and or bumping provisions.

What was particularly noteworthy to employers in this sector, was that the Health Service Provider can “suspend for the duration of this Order, any grievance process, with respect to any matter that is referred to in this Order”.

Pursuant to a Regulation dated March 23, 2020, an additional Order was enacted by the Province with respect to licensees within the meaning of the *Long-Term Care Homes Act, 2007* and, to a municipality or board of management that maintains a long-term care home.

The most recent order effectively extends the right of employers who operate long term care facilities to suspend certain collective agreement obligations in the same manner that the Province did so in the earlier Order that applied to Hospitals. The most recent Order is the same as the Hospitals’ Order save and except for the following two differences: Long Term Care employers do not have the right to redeploy staff to work in COVID-19 assessment centres (screening centres do not exist in Long Term Care Facilities) and, Long Term Care employers do not have the right to cancel or postpone services not related to responding to, preventing or alleviating the outbreak of the virus.

While no regulations/Orders have been enacted for facilities that operate retirement homes, nor for social and community service employers at this time, it is evident that the Province is prepared to respond quickly with new regulations and/or Orders as the progression of this health crises continues to unfold.

Limitations on Employees to work In One Long Term Care Facility/Hospital

In a COVID-19 Directive that has been sent to Long Term Care Homes under the *Long Term Care Homes Act*, (issued under *the Health Protection and Promotion Act*), the Province has indicated that *Employers should work with employees to limit the number of different work locations that employees are working at so as to minimize the risk to patients of exposure to COVID-19.*

Both Hospitals and Long Term Care Homes (and in some cases Retirement Homes) have been requiring their part-time employees to disclose any other positions of employment that they occupy in other health care facilities and to effectively choose to work at only one facility. There may well be resistance to this initiative from certain employees and from the Unions that represent them. We would recommend that the Unions (in a unionized environment) be advised of the implementation of a policy like this prior to eliminating any part-time employee’s right to work pursuant to any collective agreement.

While the initiative makes a great deal of sense in the context of containing the rate and spread of the virus, many employers in this sector (who have already been challenged to recruit and retain qualified PSW’s), will be presented with challenges to replace workers who opt to work elsewhere and not for the Employer that has put them to an election.

Childcare for Frontline Staff

In order to support health care and frontline workers during the COVID-19 outbreak, the Province has indicated that it will exempt certain child care centres from the order to close all licensed child care centres pursuant to the state of emergency that was declared by the Premier previously. In allowing select child care centers to resume operations, frontline workers will be able to focus their efforts in protecting the general public so that they are not concerned about family members not being looked after.

The initiative is intended to provide certain health care and other frontline workers (including doctors, nurses, paramedics, firefighters, police, and correctional officers) with access to emergency child care. These child care centres will be required to follow prescribed health and safety requirements and have a plan in place should any staff, children or parents be exposed to the virus.

If you have any questions about COVID-19 and your workplace, or any other human resource law issue, please contact a member of our team. For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

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