

## FTR Now

# COVID-19 and Staffing – Province Issues Emergency Order for Health Service Providers

**Date:** March 22, 2020

With a single Order, Ontario Health Service Providers have been given broad authority to take all reasonable steps necessary to staff as needed to deal with the COVID-19 pandemic. Details of this Order, which came into effect the evening of Saturday, March 21, 2020, are set out below.

Health Service Providers dealing with staffing issues arising out of COVID-19 should read this update and the Order as soon as possible as they continue to refine and implement their contingency plans.

In a rare Saturday night sitting of Cabinet, the government issued a new Order pursuant to the *Emergency Management and Civil Protection Act* (EMCPA). The province's powers under the EMCPA and the duration of this Order were discussed in our earlier *FTR Now*, [Ontario Declares Emergency in Light of COVID-19](#).

## Who does this Order Apply to?

[This Order](#) applies to the following Health Service Providers – public hospitals under the *Public Hospitals Act*, private hospitals within the meaning of the *Private Hospitals Act*, mental health hospitals governed by the *Mental Health Act* and the Ottawa Heart Institute.

This Order does not apply to Long-Term Care home providers, Municipal Homes for the Aged or Public Health Units. [**Editor's Note: Since the publication of this article, further directives have been issued regarding long-term care home providers. See our *FTR Now* of March 24, 2020 [COVID-19 and Long-Term Care – Ontario Takes Significant Steps to Address Staffing Concerns](#).**]

## What Can a Health Service Provider do Under this Order?

Regardless of any collective agreement, statute, regulation, order, policy, arrangement or agreement, the Order authorizes Health Service Providers to take “*any reasonably necessary measure to respond to, prevent and alleviate the outbreak of the coronavirus for patients.*”

The Order does not suspend all provisions of the collective agreement or employment agreement.

Instead, it focuses on granting Health Service Providers the authority to take the steps reasonably necessary to staff regardless of any provisions of a collective agreement, statute, policy, employment agreement and so on.

The Order grants Health Service Providers the immediate authority to do the following:

- Redeploy staff within different locations within the health services provider
- Redeploy staff to work in COVID-19 assessment centres
- Change the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work
- Change the scheduling of work or shift assignments
- Defer or cancel vacations, absences or other leaves
- Employ extra part-time or temporary staff or contractors, including for the purpose of performing bargaining unit work
- Use volunteers to perform work including bargaining unit work
- Provide appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan
- Conduct any skills and experience inventories of staff to identify possible alternative roles in priority areas.
- Collect or require information from staff or contractors about their availability to work or provide services
- Collect or require information from staff or contractors about their likely or actual exposure to COVID-19 or about any other health conditions that may affect their ability to provide services
- Cancel or postpone services that are not related to the COVID-19
- Suspend the grievance process with respect to any matter arising out of this Order for the duration of the Order.

## Childcare Relief for Frontline Workers

On March 22, 2020, the [Ontario government also announced](#) it will exempt certain childcare centres from the order to close (further to the declared emergency on March 17, 2020) in order to support frontline workers during the COVID-19 outbreak. This includes doctors, nurses, paramedics, firefighters, police, and correctional officers. In a press conference on March 22, Minister Lecce indicated that these centres will be offered free of charge and that strict guidelines will be in place to restrict the spread of COVID-19 within these settings.

## Important Considerations and Next Steps

The Order does not suspend all parts of a collective agreement, workplace policy or contract of employment. It contemplates that unilateral changes will be made within the confines of this Order and it expressly contemplates that this authority will be acted upon reasonably.

Accordingly, it is strongly recommended that Health Service Providers consider consulting with staff and bargaining agents prior to implementing any planned changes. Further, in respect of the collection of information or data of a sensitive or private nature, care should continue to be taken to safeguard that information.

As with all Orders issued under EMCPA, this current Order will be valid for 14 days unless it is revoked or renewed in accordance with the statute.

We will continue to monitor all developments related to this Order and all previously issued Orders under the EMCPA and will communicate any changes to our clients.

For more information on this new Order, please contact [your regular Hicks Morley lawyer](#).