

## FTR Now

# Significant Staffing and Deployment Flexibility Provided to Developmental Services Agencies to Alleviate the Effects of COVID-19

**Date:** April 6, 2020

On April 3, 2020, the Ontario government issued an order under the *Emergency Management and Civil Protection Act* (EMCPA) that applies to service agencies which provide services and supports to adults with developmental disabilities. Under the terms of the order, service agencies shall and are authorized to take, with respect to staffing and work deployment, any reasonably necessary measures to respond to, prevent and alleviate the outbreak of COVID-19.

For the purposes of the order ([O. Reg. 121/20](#)), service agencies and “service and support” have the same meaning as in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act* (Act).

The order applies for the duration of the declared emergency under the EMCPA.

## Staffing and Work Deployment

The order specifically authorizes service agencies to do any of the following *despite any statute, regulation, order, policy, arrangement or agreement, including a collective agreement*:

- identify staffing priorities and develop, modify and implement redeployment staffing plans, which include:
  - redeployment of staff within various locations where the service agency provides services and supports
  - change of work assignments, including permitting non-bargaining unit staff to do bargaining unit work
  - change of work schedules or shift assignments
  - deferral or cancellation of vacations, absences or other leaves, regardless of whether they are established by statute, regulation, agreement or otherwise
  - employment of extra staff (full-time, part-time or temporary) or contractors, who may perform bargaining unit work, as well as use of volunteers who may also perform bargaining unit work
  - provide training and education as needed
- assess the skills and experience of staff to determine whether they can perform alternative roles
- require and collect information from staff or contractors regarding their availability to provide services, and about their likely or actual exposure to COVID-19 or other health conditions that may impact their ability to provide support and services.

The order specifically states that “a service agency may implement redeployment plans without complying with provisions of a collective agreement, including lay-off, seniority/service or bumping provisions.” Notwithstanding that wording, we strongly recommend that you seek legal advice with respect to potential liability before implementing a redeployment plan.

The order also states that any grievance process with respect to any matter referred to in the order is suspended for the duration of the order.

## Reporting and Documentation

Despite any provision in the Act, its regulation (O. Reg. 299/10 or Regulation) or any policy directives made under the Act, service agencies are not required to report any prescribed information to the Ministry except for serious occurrence reports as required by the policy directive. Agencies are still required to notify persons acting on behalf of a person with a developmental

disability as required under s. 9 of the Regulation.

A service agency will not be required to document information, unless it is necessary to ensure the safety, security and well-being of persons with developmental disabilities who receive services and supports from the service agency.

Necessary documentation includes records related to complaints, financial assistance, health promotion, medical services and medication, and any information related to suspected abuse. Subject to certain exceptions, service agencies are not required to review or document any updates to the individual support plan of a person with a developmental disability nor are they required to conduct a review of the behaviour support plan of a person with a developmental disability who has challenging behaviour, as required under the Regulation.

## Staffing, Training and Orientation

With respect to staffing, training and orientation, among other things:

- where required, staffing levels may be adjusted and other measures may be used to ensure the safety, security and well-being of persons with developmental disabilities
- where they are unable to arrange police record checks on new staff or volunteers, service agencies may defer this requirement as long as appropriate measures are taken to ensure the safety of persons with developmental disabilities
- orientation, refreshers or reviews are not required for members of the board of directors, subject to exceptions
- training and orientation requirements set out in the Regulation do not need to be met as long as agencies ensure staff and volunteers are sufficiently trained to meet the specific individual needs of the persons with developmental disabilities
- there is no requirement to provide orientation to persons with developmental disabilities, except for mandatory education and awareness-building on abuse prevention and reporting.

## Other Provisions

Service agencies are not required to comply with section 26 of the Regulation where alternate residential arrangements are needed, provided measures are adopted to ensure the health and safety of the persons receiving the service.

Finally, service agencies must continue to ensure a safe and secure environment for persons with a developmental disability, and they must continue to comply with any order or directive issued under the *Health Protection and Promotion Act*.

Should you have any questions regarding this order and how it impacts your organization, please contact [Dan Fogel](#) at 416.864.7349, [Chuck Hofley](#) at 613.369.2101, or [Vince Panetta](#) at 613.541.4003.