

HR HealthCheck

COVID-19 and Long-Term Care – Ontario Government Imposes “Single-Employer” Rule for Long-Term Care Employees

Date: April 15, 2020

On April 14, 2020, the Ontario government issued an Emergency Order (Order) pursuant to the *Emergency Management and Civil Protection Act* (EMCPA) which relates specifically to staffing issues in Ontario’s long-term care sector. The Order, [O. Reg. 146/20, Limiting Work to a Single Long-Term Care Home](#), creates immediate obligations for both long-term care employers and employees working in long-term care homes. Once the requirements of the Order are met, the Order will effectively impose a “single-employer” rule for employees in this sector, preventing them from working for more than one Health Service Provider or retirement home until the Order is lifted.

In this *HR HealthCheck* we provide a brief summary of the Order, and address the impact that it may have on long-term care providers as they navigate their ongoing COVID-19 response.

Who does this Order apply to?

The Order creates immediate obligations for long-term care providers and for specified groups of employees who work at long-term care homes. It applies to the same groups of employers – long-term care home providers and Municipal Homes for the Aged – who were subject to the government’s earlier Emergency Orders (see below) in this sector, and creates specific obligations for employees of these employers who also perform work as an employee of any other Health Service Provider or retirement home.

The Order incorporates the definition of Health Service Provider contained in section 2(1) of the [Connecting Care Act, 2019](#), which includes an extensive list of employers across the healthcare sector, such as all public hospitals, psychiatric facilities, long-term care homes and Municipal Homes for the Aged, home care services, and community health centres.

What are employees required to do under the Order?

The Order places two significant requirements on the employees of a long-term care home provider or a Municipal Home for the Aged.

First, effective immediately, and in any event by no later than 5:00 p.m. on Friday, April 17, 2020, any person who performs work as an employee of a long-term care provider and who also

performs work as an employee of any other Health Service Provider or retirement home is required to inform each of their employers (who are either Health Service Providers or retirement homes) that they are subject to the Order.

For example, if an employee currently works as a registered nurse at a long-term care home, and holds casual roles at both their local hospital and at a local community health centre, they would have to inform all three of these employers of the fact that they are covered by the Order.

Second, commencing at 12:01 a.m. on Wednesday, April 22, 2020, an employee of a long-term care provider who performs work in a long-term care home may not then perform work for another long-term care home (whether operated by the same employer or otherwise), as an employee of any other Health Service Provider, or as an employee of a retirement home.

Using the same example as above, commencing on April 22, 2020, as an employee of a long-term care home, the registered nurse would now be precluded from performing work for their other employers so long as the Order remains in effect.

The Order mandates compliance by these employees, irrespective of whether such compliance would be consistent with the provisions of a collective agreement which governs their employment. Further, and in order to provide protection to employees who comply with these requirements, the Order explicitly refers to the protections of the EMCPA which state that a person providing services in compliance with an order made under the EMCPA shall not have their employment terminated.

Employees who are covered by the Order would thus be freed from their obligations to their other employers – such as an obligation to make oneself available or to comply with particular attendance or scheduling requirements – and their employers would be precluded from dismissing them due to their compliance with the Order.

What are employers required to do under the Order?

In order to give effect to the requirements placed on employees under the Order, the Ontario government has mandated that, commencing at 12:01 a.m. on Wednesday, April 22, 2020, long-term care providers are required to ensure that any employee who performs work in a home they operate or maintain is not also performing work in another long-term care home, for any other Health Service Provider, or as an employee of a retirement home.

Long-term care providers are also required to post a copy of the Order in a conspicuous location within their workplace.

The Potential Impact of the Order

While the actual impact of this Order is yet to be seen, the Order effectively will require those

employees who work both in a long-term care home and for one or more other Health Service Providers (including other long-term care homes for the same or other employers) or retirement homes to cease working for multiple employers effective 12:01 a.m. on Wednesday, April 22, 2020. While not explicit in the Order, this will necessarily require these employees to commit to working solely for a single long-term care home employer, and to cease working for their other employers in the long-term care and healthcare sectors until such time that the Order expires or is rescinded.

For long-term care providers, the imposition of a legislated “single-employer” rule should address some of the most pressing concerns in this sector around the possibility of staff acting as a vector for transmission of COVID-19 between various employers. The Order does not, however, fully address the staffing concerns that persist in this sector.

Once the single-employer requirement takes effect on April 22, 2020, long-term care providers may have a better idea of their staffing needs, and may still utilize the powers given to them under the initial Emergency Order for the long-term care sector, [O. Reg. 77/20, Work Deployment Measures in Long-Term Care Homes](#), dated March 23, 2020 (for more information on O. Reg. 77/20, see our *FTR Now* [COVID-19 and Long-Term Care – Ontario Takes Significant Steps to Address Staffing Concerns](#)). To that end, the Ontario government has also issued [O. Reg. 147/20](#), which amends the original Emergency Order (O. Reg. 77/20) to reflect that employees are to be redeployed in a manner so that they are no longer providing services for more than one long-term care home.

While not addressed in the Order, these measures will also likely have an impact throughout the broader healthcare sector. With employees dedicating their services solely to their long-term care employer, they will no longer be available to perform work for their other Health Service Provider or retirement home employers, presumably for the duration of the COVID-19 emergency. These employers will need to be prepared to address the staffing impacts that may arise, and may have to utilize the powers given to them under the Emergency Orders previously issued specifically for the [healthcare](#) and the [retirement home](#) sectors in order to do so.

The Order also promises some degree of protection for employees pursuant to section 7.0.2(6) of the EMCPA, provided that they are acting in compliance with the Order. Employees may also have entitlement under the declared emergency leave under the *Employment Standards Act, 2000* in respect of their employment with their other employers.

The responsibility for enforcing this requirement is left to the long-term care providers themselves, who may be subject to fines under the EMCPA for non-compliance.

Final Observations

As noted above, the true impact of this new Order is yet to be seen. Employers in the long-term care sector and throughout the broader healthcare sector will need to be vigilant to ensure that their employees are compliant with their obligations under the Order, and will likely have to take

immediate steps to address staffing concerns in order to be prepared for the Wednesday April 22, 2020 deadline.

It should also be noted that on April 15, 2020, the Ontario government [announced](#) the [COVID-19 action plan: long-term care homes](#) which sets out additional measures for long-term care homes. These include more aggressive and targeted testing, improved infection control, redeploying healthcare workers to long-term care homes as necessary, enhanced training and education and better isolation measures.

As employers in the healthcare and long-term care sectors continue to adapt to the challenges of COVID-19, we at Hicks Morley will continue to monitor all developments which may have an impact on the sector, and will provide timely updates for our clients.

For more information on how this Order may affect your organization, please feel free to contact [John J. Bruce](#) at 416.864.7285, [Andrew N. Zabrovsky](#) at 416.864.7536, [Sarah A. Eves](#) at 416.864.7254, [Mark H. Mason](#) at 416.864.7280, or [your regular Hicks Morley lawyer](#).