

## FTR Now

# Emergency Orders Made Regarding Municipal Work Deployment and Staffing in Light of COVID-19

**Date:** April 17, 2020

On April 16, 2020, the provincial government made an order under the *Emergency Management and Civil Protection Act* (EMCPA), [O. Reg. 157/20 Work Deployment Measure for Municipalities](#), (Order) which authorizes municipalities to take any reasonably necessary measures with respect to work redeployment and staffing in order to prevent, reduce or mitigate the effects of COVID-19 on a specific list of critical municipal services (Critical Services).

On the same date, the government also made an order with respect to work deployment and staffing by district social services administration boards.

## Work Deployment Measures for Municipalities

### Application

The Order applies to every municipality (within the meaning of the *Municipal Act, 2001*) where the head of the municipality's council has declared an emergency under section 4 of the EMCPA.

It does not apply to persons normally employed:

- as firefighters with the meaning of the *Fire Protection and Prevention Act, 1997*
- by a municipality in the operation of ambulance services within the meaning of the *Ambulance Act*, including paramedics
- at municipal drinking water systems or at wastewater collection facilities or wastewater treatment facilities operated by a municipality (a [separate order](#) applies to these employees)
- at long-term care homes maintained by a municipality (a [separate order](#) applies to these employees)
- at a board of health within the meaning of subsection 1 (1) of the *Health Protection and Promotion Act* if the employer is a municipality (a [separate order](#) applies to these employees).

### Work redeployment and staffing

The specific list of Critical Services to which the Order applies are set out at section 3 of the Order:

- a. the maintenance of municipal long-term care homes
- b. the delivery of public health services
- c. the operation of homeless shelters and the provision of services to homeless persons
- d. the provision of drinking water
- e. waste management and sanitation
- f. wastewater management
- g. public transportation services operated by the municipality
- h. the provision of assistance under the *Ontario Works Act, 1997*, if the municipality is designated as a delivery agent under that Act
- i. the administration, operation and funding of child care programs and services under the *Child Care and Early Years Act, 2014*
- j. the enforcement of by-laws
- k. services related to the implementation of the municipality's emergency plan.

Despite any other statute, regulation, order, policy, arrangement or agreement, including a collective agreement (including its lay-off, seniority/service or bumping provisions), the Order authorizes municipalities to identify staffing priorities and develop, modify and implement redeployment plans with respect to the specific Critical Services. The options available to municipalities include:

- Redeploying staff within different locations in the municipality.
- Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work.
- Changing the scheduling of work or shift assignments.
- Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise.
- Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work.
- Using volunteers to perform work, including to perform bargaining unit work.
- Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.

A municipality must provide at least 24 hours' notice to the applicable bargaining agent before implementing a redeployment plan as described above. However, redeployment plans involving bargaining unit work outside of the Critical Services will still need to be negotiated with the bargaining agent.

Municipalities are authorized to conduct skills and experience inventories of staff to identify if they are able to work in possible roles in priority areas. They are also authorized to require and collect information from staff, contractors or volunteers about their availability to provide services and about their likely or actual exposure to COVID-19, or other health conditions that may affect their

ability to provide services.

Services that are not related to the COVID-19 response identified in this Order or not deemed to be critical by a municipality's emergency plan may be cancelled or postponed. Also, any grievance process with respect to any issue referred to in this Order is suspended for the duration of the Order.

In a [letter to Municipal Heads of Council from the Minister of Municipal Affairs and Housing dated April 16, 2020](#), the Minister states that notwithstanding the Order, the *Occupational Health and Safety Act* and any existing rights under the *Employment Standards Act, 2000* continue to apply. The Minister also states that "At this critical time, it is important that municipalities continue to work collaboratively and engage in good faith with their bargaining agents."

The Minister goes on to identify the following objectives:

- "In making staffing decisions, first provide opportunity for full-time work to existing part-time staff before seeking out and employing extra full-time staff from outside your organization."
- "In redeploying staff, should there be a difference in the terms and conditions of work, in the different departments of the organization, the expectation is that staff will not receive a lower wage than their home position."

The Minister requests that if a municipality implements the authority in this Order, it keeps the Minister's staff apprised by notifying its local Municipal Services Office.

## **Work Deployment for District Social Services Administration Boards**

On April 16, 2020, a similar order was made under the EMCPA with respect to Work Deployment Measures for District Social Services Administration Boards (DSSABs) ([O. Reg. 154/20](#)). This order authorizes DSSABs to take any reasonably necessary measure with respect to work redeployment and staffing in order to prevent, reduce or mitigate the effect of the virus on critical services delivered by their employees.

Critical services for DSAABs are defined in the order as the operation of homeless shelters and the provision of services to homeless persons, the provision of assistance under the *Ontario Works Act, 1997*; and the administration, operation and funding of child care programs and services under the *Child Care and Early Years Act, 2014*.

Persons normally employed by the DSAABs in the operation of ambulance services within the meaning of the *Ambulance Act*, including paramedics, are excluded.

Otherwise, the terms of the DSSABs order are similar to those which apply to the municipal Order, O. Reg. 157/20, discussed above.

Should you require more information about these orders and their impact on your operations, please contact [Stephanie Jeronimo](#) at 416-864-7530 or [your regular Hicks Morley lawyer](#).