

FTR Now

Emergency Order Limiting Staff Mobility Within Congregate Care Setting Agencies

Date: April 30, 2020

On April 24, 2020, the Ontario government made an order ([O. Reg. 177/20, Congregate Care Settings](#)) (Order) under the *Emergency Management and Civil Protection Act* (EMCPA), similar to those it has made in health and long-term care, that addresses the issue of frontline staff working for more than one employer during the circumstances of the current pandemic. The measures are designed to further reduce the risk of transmission of COVID-19 between residences operated by specified social service agencies.

The Order applies to congregate care setting agencies, which are service agencies and transfer payment recipients in the following three sectors (as defined in the Order): Developmental Services Sector, Violence Against Women/Anti-Human Trafficking Sector and the Intervenor Sector that provides services to deafblind persons.

The Order provides restrictions for staff members at congregate care setting agencies who provide care in a residential setting. For the purposes of the Order, a “staff member” includes a person who performs work for the agency as an employee or as temporary staff. This includes a person hired through an employment agency or other third party to perform work directly at a residence operated by the agency. It does not include those staff members who can perform their work or provide services remotely.

The requirements can be summarized as follows:

- If a staff member works in a residence at more than one agency within a single sector listed above, then they were required as of 9 a.m. on Monday, April 27, 2020, to notify each agency that the Order applied to them.
- As of 12:01 a.m. Thursday April 30, 2020, a staff member can only work in a residence for only one agency in any particular sector. [Note that staff members can still work for other employers outside their sector, as stated by the [Ministry of Children, Community and Social Services](#).]

The employment of a staff member cannot be terminated because they are complying with these requirements, and the staff member must comply with the requirements even if doing so would not be in compliance with the provisions of a collective agreement.

As of 12:01 a.m. Thursday, April 30, 2020, a congregate care setting service agency shall also ensure that any of its staff members who perform work in a residence operated by the agency do not also perform work in a residence operated by a different congregate care setting service agency in the same sector.

If there is a COVID-19 outbreak in a residence where the staff member works, the agency is required to report to the local medical officer of health. If it is determined that a staff member was exposed to the virus, that staff member can only be scheduled to work at that residence until the outbreak is over. Any determination of an outbreak, its cessation, or staff member exposure shall be determined in accordance with the advice, recommendations and instructions of public health officials.

Note that where an employee is unable to work at an agency due to the requirements in the Order, the employee may be entitled to claim a leave of absence from that agency in accordance with the terms of the *Employment Standards Act, 2000* including Declared Emergency Leave or Infectious Disease Emergency Leave. While eligibility for a leave under the ESA is to be determined based on each individual's circumstances, MCCSS has indicated that the government's intention is that an employee would not lose their job at the other locations as a result of the Order.

The Order requires every congregate care setting service agency to follow any guidance, advice, or recommendations, from the Ministry of Health or the Chief Medical Officer of Health with respect to COVID-19 that applies to congregate care setting agencies.

The Order must be posted in a conspicuous and easily accessible location at each residence operated by a congregate care setting service agency.

Note that where there is a conflict, the requirements of this Order will prevail over other EMCPA orders relating to congregate care setting service agencies, namely [O. Reg. 121/20 Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Providing Intervenor Services](#) and [O. Reg. 145/20 Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services](#).

If you have any questions about this Order, please contact [Steve Goodwin](#) at 519.883.3106 or [your regular Hicks Morley lawyer](#).