

## School Board Update

# Ontario Enables School Board Employees to Be Redeployed to Congregate Care Settings

**Date:** May 12, 2020

On May 8, 2020, the Ontario government filed [Ontario Regulation \(O. Reg.\) 205/20 – Education Sector](#) (Order) made under the *Emergency Management and Civil Protection Act* which applies to all Ontario school boards within the meaning of the *School Boards Collective Bargaining Act, 2014*.

The purpose of this new Order is to permit educational workers to be deployed to congregate care settings (as defined in the Order) during the COVID-19 pandemic, including to hospitals, long-term care homes, retirement homes, and certain women’s shelters. In particular, with respect to work deployment and staffing, school boards shall and are authorized to take any reasonably necessary measure to support the operators of congregate care settings in the non-clinical response to the outbreak of the virus.

## Authorized Activities Relating to Redeployment

The Order directs and authorizes school boards to identify staffing priorities and develop, modify and implement redeployment plans with respect to providing support to congregate care settings, despite any other statute, regulation, order, policy, arrangement or agreement, including a collective agreement. Options include the following:

- i. redeploying staff within different locations in or between congregate care settings
- ii. redeploying staff to provide assistance within a congregate care setting
- iii. redeploying staff to work in COVID-19 Assessment Centres
- iv. changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work
- v. changing the scheduling of work or shift assignments
- vi. deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise
- vii. providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.

School boards are authorized to conduct inventories of their staff’s skills and experience 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 or contractors 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.

## Key Implications

There are a few key provisions in this Order for which school boards should take note:

(1) staff of a school board who provide assistance within a congregate care setting remain staff of the school board, and

(2) a school board is not authorized to take any action with respect to an employee that contravenes a collective agreement, unless there is a redeployment agreement between the school board and the employee bargaining agent, and unless the conduct of the school board with respect to the employee, taken as a whole, is substantially compliant with that agreement.

As the employer to the employees who are redeployed to the congregate care setting, school boards will continue to have all of their usual legal obligations to those employees, including among others, health and safety obligations even though they are not directly managing them.

Practically, these provisions also mean that in advance of any redeployment, school boards should engage with bargaining agents in order to determine the terms of the redeployment. Although not explicitly articulated in the Order, in its [news release](#) regarding the Order, the provincial government clearly stated that this Order is meant to support *voluntary* redeployment.

In considering whether redeployment is practical, school boards will also need to consider the following:

- Given that educational workers will remain school board employees while redeployed to congregate care settings, other parts of the collective agreements and other terms and conditions continue, including pay, benefits, pension, health and safety, service and seniority provisions.
- School boards will continue to have obligations with respect to the Ontario *Human Rights Code*, the *Occupational Health and Safety Act*, the *Employment Standards Act, 2000*, and the *Workplace Safety and Insurance Act, 1997* for redeployed staff.
- School boards will need to engage with the congregate care settings to which staff will be redeployed to ensure a clear understanding of the relationship between the school board, its staff and the recipient congregate care setting, and the responsibilities of each party.
- School boards and congregate care settings will need to develop arrangements for appropriate training and orientation, the provision of personal protective equipment, guidance on use of personal protective equipment, assignment of duties and supervision of redeployed staff.
- School boards will want to contact their general liability insurer and any other insurance

providers in advance of entering into a redeployment agreement to confirm the scope of their coverage.

- Following redeployment to a congregate care setting, school boards should ensure appropriate infection protection and control measures are implemented prior to returning the employee back to their position at the school board.

The Ministry of Education has released a template “Redeployment Agreement” for use as a starting point for discussions between the employers (the school board and the receiving employer) and the applicable unions. School boards should review the above-noted considerations when customizing the template based on local discussions and ensuring that it meets the requirements of the Order.

## Next Steps

In the coming days, it is anticipated that an online provincial portal will be opened for school boards and employees to provide employees with the opportunity to volunteer for redeployment, and to self-identify their skills/abilities, geographic location and availability, among other things. We will continue to monitor these developments as more information becomes available.

Should you require more information about this Order and its impact on your operations, please contact [Lauri Reesor](#) at 416.864.7288, [Nadine Zacks](#) at 416.864.7484, [Dianne Jozefacki](#) at 416.864.7029 or [your regular Hicks Morley lawyer](#).