

FTR Now

New Order Clarifies Scope of Pandemic Pay

Date: June 1, 2020

On April 25, 2020, the Ontario government announced that it would be providing temporary pandemic pay to frontline workers fighting COVID-19 (see our [HR Healthcheck](#) of the same date and our [FTR Now](#) of May 7, 2020). At the time, we observed that there were some key unknown elements about pandemic pay that required further direction from the government. The Ontario government has now provided additional details about pandemic pay with a new Order, [Special Rules Re Temporary Pandemic Pay](#), made on May 29, 2020 under the *Emergency Management and Civil Protection Act*.

The Order provides that only employees who work in eligible roles at eligible workplaces, as set out in the government's online document, "[Eligible workplaces and workers for pandemic pay](#)," are entitled to pandemic pay. Individuals redeployed to perform work as eligible employees are also eligible for pandemic pay. Please note that the government has revised the list of eligible employees since it was first published, and we recommend that all employers consult the online document for the most updated list of eligible employees. In addition to revising the categories of eligible employees, the government clarified that eligible employees who work at least 100 hours cumulatively for two or more eligible workplaces are entitled to pandemic pay.

It should also be noted that the new Order stipulates that the categories of eligible employees cannot be expanded beyond those categories set out in the online document referenced in the prior paragraph. This prohibition applies to employers, as well as to arbitrators and arbitration boards, tribunals, officers and courts.

The Order also provides clarity as to the intersection of pandemic pay with collective agreements. Employers with union employees do not need the bargaining agent's agreement to implement pandemic pay and unions are not permitted to grieve the payment of pandemic pay.

Pandemic pay applies only to hours actually worked, and does not apply to periods when an employee is on vacation or sick leave. It is not part of employees' base salary or pensionable earnings, and has no impact on benefits paid by employers or employees' entitlement to the Canada Emergency Response Benefit or Employment Insurance. Employers will be reimbursed for the increase in employers' contributions to CPP, EI, EHT and WSIB as well as any statutory entitlements payable on the pandemic pay, including public holiday pay and vacation pay.

We understand that the province will be rolling out further implementation details such as reporting

and payment requirements. Employers can expect to be provided with that information in the near future.

We will continue to monitor any further developments.

If you have any questions related to the pandemic pay, please contact [Rebecca Liu](#), [Mark Mason](#) or [your regular Hicks Morley lawyer](#).