

HR HealthCheck

Ontario Makes Emergency Order to Permit Redeployment of Health Professionals by LHINs and Ontario Health

Date: April 12, 2021

On April 9, 2021, the [Ontario government announced](#) that it has made two orders under the *Emergency Management and Civil Protection Act* (EMCPA). The first order relates to the redeployment of certain health care professionals and other workers to hospitals. The second order relates to the transfer of patients to alternative sites. The government states these actions have been taken in light of the surge of COVID-19 cases and the resulting demands on the healthcare system. These orders came into effect on April 9, 2021.

In this *HR Healthcheck*, we discuss the order relating to redeployment.

Work Redeployment

Ontario Regulation 271/21 "[Work Redeployment For Local Health Integration Networks and Ontario Health](#)" (Redeployment Order) gives local health integration networks (LHINs) and Ontario Health the following authority:

- LHINs "shall and are authorized to take, with respect to work deployment and staffing, any reasonably necessary measure to respond to, prevent and alleviate the outbreak of COVID-19."
- LHINS and Ontario Health "shall and are authorized to take, with respect to work deployment and staffing, any reasonably necessary measure to assist hospitals to respond to, prevent and alleviate the outbreak of COVID-19." "Hospital" means a health service provider as defined in paragraphs 1, 2 and 3 in subsection 1(2) of the *Connecting Care Act, 2019*.

Measures That Can be Taken

Regardless of any collective agreement, statute, regulation, order, policy, arrangement or agreement, the Redeployment Order states LHINs and Ontario Health shall and are authorized to:

- Identify staffing priorities and develop, modify and implement redeployment plans, including:
 - redeploying staff within the LHIN or to another LHIN
 - redeploying staff to provide assistance within a hospital

- 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
- employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work
- providing appropriate training or education as needed to staff to achieve the purposes of a redeployment plan.

A LHIN and Ontario Health may implement redeployment plans without complying with provisions of a collective agreement (including lay-off, seniority/service or bumping provisions) and may:

- conduct any skills and experience inventories of staff to identify possible alternative roles in priority areas
- require and collect information from staff or contractors about their availability to provide services
- require the provision of and collect information from staff or contractors about their likely or actual exposure to COVID-19, or about any other health conditions that may affect their ability to provide services, and
- suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.

Limitations

The Redeployment Order specifically states that staff who are redeployed or provide assistance within a hospital remain the staff of the deploying entity. In addition, these actions are not to be treated as constituting “one employer” or as a sale of part of a business for the purposes of the *Labour Relations Act, 1995*, nor do they impact whether the LHIN, Ontario Health or a hospital is considered to be a hospital for the purposes of the *Hospital Labour Disputes Arbitration Act*.

Important Considerations

Note that the Redeployment Order does not suspend all parts of a collective agreement, workplace policy or contract of employment. It contemplates that unilateral changes will be made within the confines of the Order and it expressly contemplates that this authority will be acted upon reasonably.

As with all Orders issued under EMCPA, the Redeployment Order will be valid for 14 days unless it is revoked or renewed in accordance with the statute.

Should you have any questions about the Redeployment Order, please contact [your regular Hicks Morley lawyer](#).