

HR HealthCheck

Ontario Makes Two Emergency Orders to Assist Hospitals in Responding to Increasing COVID-19 Cases

Date: April 23, 2021

On April 21, 2021, the Ontario government made two emergency orders under the *Emergency Management and Civil Protection Act* (EMCPA) which will have an immediate impact on hospitals and the ongoing staffing challenges they face in dealing with COVID-19 cases. The first Order will permit staff in independent health facilities to be redeployed to hospitals. The second will permit out-of-province health care professionals to practise in Ontario hospitals. These Orders came into effect on April 21, 2021.

[Ontario Regulation 304/21](#) “Work Redeployment For Independent Health Facilities” (Redeployment Order)

The Redeployment Order authorizes independent health facilities (as defined in ss. 1(1) of the *Independent Health Facilities Act*) “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 ss. 1(2) of the *Connecting Care Act, 2019*.

Measures that May be Taken

Despite any other statute, regulation, order, policy, arrangement or agreement, including a collective agreement, the Redeployment Order states that an independent health facility is authorized to:

- Identify hospital staffing priorities and develop, modify and implement redeployment plans, which includes:
 - 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 assignment
 - deferring or cancelling vacations, absences or other leaves
 - providing appropriate training or education as needed to staff to achieve the purposes of a redeployment plan.

An independent health facility 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 Redeployment Order, any grievance process with respect to any matter referred to in the Order.

Limitations

The Redeployment Order specifically states:

- staff who are redeployed or provide assistance within a hospital remain the staff of the independent health facility
- these actions are not to be treated as a sale of part of a business or as determining that the organizations constitute “one employer” for the purposes of the *Labour Relations Act, 1995*
- the independent health facility shall not “be considered to have amalgamated with the receiving hospital or to have transferred all or substantially all of its assets to the receiving hospital for the purposes of section 8 of the *Public Sector Labour Relations Transition Act, 1997*”
- these actions shall not impact whether the independent health facility or the hospital is considered to be a hospital for the purposes of the *Hospital Labour Disputes Arbitration Act*.

[Ontario Regulation 305/21](#) “Regulated Health Professionals” (RHP Order)

The RHP Order authorizes health care professionals, which includes those who hold an out-of-province certificate (as defined), to “engage in any aspect of the practice of any health profession in order to provide services to hospital patients,” where the health care professional:

- is required to provide such services in order to respond to, prevent or alleviate the effects of the outbreak of COVID-19
- provides services that are consistent with the duties that have been assigned or the privileges that have been granted by the hospital, and
- acts in a consistent manner with measures taken by the hospital under [Ontario Regulation 74/20](#) “Work Redeployment for Certain Health Service Providers.”

Limitations

The RHP Order applies despite any statute, including the *Public Hospitals Act*, the *Regulated Health Professions Act, 1991* and any health profession Act, any regulation, order or policy, any arrangement or agreement, including a collective agreement and, any policy, practice standard or guideline made by a College.

A member of a College (defined as a “College of a health profession or group of health professions established or continued under a health profession”) remains subject to the jurisdiction of the College for any incompetence that occurs while the member provides services under this Order.

Important Considerations

Employers are reminded that the discretion granted by the Redeployment Order and the RHP Order must be exercised in a non-discriminatory manner, in accordance with the Ontario *Human Rights Code*.

Note also that the Redeployment Order does not suspend all parts of a collective agreement, workplace policy or contract of employment. It contemplates that redeployment will be made within the confines of the Order.

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

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