



What's New in HR Law

UPDATE: Ontario Government Streamlines Staffing and Administrative Processes Healthcare Employers in Response to COVID-19

April 6, 2020

**** This post has been updated to highlight additional regulatory changes that have been enacted since our initial post on March 31, 2020.***

On March 21, March 24, and March 27, 2020, the Ontario Government filed three Orders ([O. Reg. 74/20](#), [O. Reg. 77/20](#) and [O. Reg. 95/20](#)) under the *Emergency Management and Civil Protection Act* that greatly expand the rights of certain healthcare employers to redeploy their employees in response to the COVID-19 outbreak and streamline certain administrative processes.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box
57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

Which Employers are Covered by the Orders?

The Government's March 21st Order applies to private and public hospitals, as well as psychiatric facilities that do not form part of a correctional institution, prison or penitentiary.

The Government's March 24th and March 27th Orders apply to long-term care facilities that are licensed under Ontario's *Long-Term Care Homes Act, 2007*. This includes any facilities that are operated by a municipality/board of management and facilities that are operated by any other licensee.

What Rights do the March 21st and March 24th Orders Grant Employers?

Under the March 21st and March 24th Orders, hospitals, psychiatric facilities and long-term care facilities are empowered to implement, with respect to work deployment and staffing, any *reasonably necessary measure* in their workplaces to respond to, prevent and alleviate the outbreak of COVID-19 for their patients and residents. This broad authority applies regardless of whether the measure contravenes any restrictions under any other statute, regulation, order, policy, arrangements or collective agreement (including any lay-off, seniority or bumping provisions).

The March 21st Order specifically empowers hospitals and psychiatric facilities to develop and implement redeployment plans for their workplaces, including by:

- Redeploying staff between different locations in (or between) facilities;
- Redeploying staff to COVID-19 Assessment Centres;
- Changing schedules and shift assignments;
- Changing assignments of work, including by assigning non-bargaining unit employees or contractors to perform bargaining unit work;
- Deferring or canceling vacations, absences and leaves of absences, including statutory entitlements;
- Employing extra part-time or temporary workers or contractors, including to perform bargaining unit work;
- Using volunteers to perform bargaining unit work; and
- Providing training and education as needed to staff and volunteers.

The March 24th Order provides long-term care homes with the same authority to implement redeployment plans, except that it does not permit the redeployment of staff to COVID-19 Assessment Centres.

The March 21st and March 24th Orders also expressly provide hospitals, psychiatric facilities and long-term care facilities with increased rights to request and collect information from staff members and contractors, including:

- Conducting skills and experience tests to identify alternative roles for them to perform;
- Requiring that they provide the employer information about their availability to work; and

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- Requiring that they provide the employer information about their likely or actual exposure to COVID-19 and/or about any other health condition that may impact their ability to work.

The March 21st and March 24th Orders also temporarily suspend the grievance process contained in any collective agreement in the workplace with respect to any matter covered by the Orders.

What Rights Does the March 27th Order Grant Long-Term Care Homes?

The March 27th Order aims to further assist long-term care homes with responding to the COVID-19 pandemic by reducing administrative burdens and providing them further powers over staffing decisions. The March 27th Order empowers long-term care homes to take any reasonably necessary measure to respond to, prevent and alleviate the outbreak of COVID-19 in a long-term care home, including by doing, or *not doing*, certain actions regardless of any restrictions set out in any other statute, regulation, order, or policy. In particular, the March 27th Order:

- Entitles licensees to fill any staff position with the person who, in their reasonable opinion, has the adequate skills, training and knowledge to perform the duties required of that position;
- Removes the requirement for licensees to report complaints or other information to the Director, with the exception of critical incident reports and mandatory reports;
- Relaxes licensees' obligation to document and post certain information;
- Relaxes licensees' obligation to hold care conferences and perform annual physicals;
- Enables licensees to implement flexible practices and processes related to the admission, transfer and discharge of residents and the administration of drugs to residents; and
- Removes certain procedural requirements for licensees seeking approval of a licence or management contract under the *Long-Term Care Homes Act*.

The powers granted to long-term care homes under the March 27th Order do not in any way detract from their obligation to ensure a safe and secure environment for their residents or to comply with any order or directive issued under the Health Protection and Promotion Act.

***UPDATE: Retirement Homes and Boards of Health**

On April 1 and April 2, 2020, the Ontario Government released two additional orders ([O. Reg. 116/20](#) and [O. Reg. 118/20](#)) granting similar redeployment rights as those outlined above to:

- Boards of Health under the *Health Protection and Promotion Act*; and
- Retirement homes and other licensees under the *Retirement Homes Act, 2010*.

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The April 1st and April 2nd Orders largely mirror the March 21st and March 24th Orders, with some slight variation, and grant Boards of Health and retirement homes the same broad authority to take any reasonably necessary measures in respect of work deployment and staffing to respond to, prevent, and alleviate the outbreak of COVID-19.

The April 2nd Order emphasizes, however, that retirement homes are still required to ensure a safe and secure environment for their residents, comply with any guidance given by the Chief Medical Officer of Health, and comply with any applicable directive issued under the *Health Protection and Promotion Act*.

With respect to retirement homes in particular, the April 2nd Order also temporarily relaxes requirements for:

- Screening new employees and volunteers;
- Holding care conferences; and
- Documenting and posting certain information.

Future Updates

Our firm continues to closely monitor the developments surrounding the COVID-19 outbreak and whether similar redeployment and information collection powers will be granted to other employers in the broader healthcare sector. We will continue to provide further information as it becomes available.

Need more information?

For more information regarding workplace management during the COVID-19 outbreak, contact [James Jennings](#) at 416-408-5503, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca

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