



# What's New in HR Law

## Ontario Government Authorizes Municipalities to Implement Reasonably Necessary Measures and Redeployment Plans in Response to COVID-19

April 17, 2020

On April 16, 2020, the Ontario Government issued an order under the *Emergency Management and Civil Protection Act* (O. Reg. 157/20) that significantly expands the rights of municipalities, allowing them to redeploy their employees in response to the COVID-19 outbreak, streamline various administrative processes, and gather critical information more efficiently. The measures are similar to those that have already been adopted in the [healthcare context](#).

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

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## Who Does the Order Apply To?

The Order applies to every municipality in which an emergency is or has been declared under section 4 of the *Emergency Management and Civil Protection Act* by the head of the municipality's council.

However, there are various exclusions outlined in the Order. In particular, the Order does not apply in respect of the following employees:

- Persons normally employed as firefighters within the meaning of the *Fire Protection and Prevention Act, 1997*.
- Persons normally employed by a municipality in the operation of ambulance services within the meaning of the *Ambulance Act*, including paramedics within the meaning of that Act.
- Persons normally employed at municipal drinking water systems or at wastewater collection facilities or wastewater treatment facilities operated by a municipality.
- Persons normally employed at long-term care homes maintained by a municipality.
- Persons normally employed at a board of health within the meaning of subsection 1(1) of the *Health Protection and Promotion Act* if the employer is a municipality.

Despite the exclusions, it is important to note that there are separate emergency regulations that apply to those who are employed at municipal drinking water systems and wastewater collection/treatment facilities, long-term care homes, and boards of health. Those regulations provide for a similar expansion of rights as is provided by this Order.

## What Does the Order Authorize Municipalities To Do?

The Order allows municipalities 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 so as to prevent, reduce or mitigate the effect of COVID-19 on “critical municipal services” that are delivered by its employees.

The Order specifies the “critical municipal services” to which this broad authority applies, as follows:

- The maintenance of municipal long-term care homes;
- The delivery of public health services;
- The operation of homeless shelters and the provision of services to homeless persons;
- The provision of drinking water;
- Waste management and sanitation;
- Wastewater management;
- Public transportation services operated by the municipality;
- The provision of assistance under the *Ontario Works Act, 1997*, if the municipality is designated as a delivery agent under that Act;

- The administration, operation and funding of child care programs and services under the *Child Care and Early Years Act, 2014*;
- The enforcement of by-laws; and
- Services related to the implementation of the municipality's emergency plan.

In addition to the broad authority to implement any reasonably necessary measures to protect the critical municipal services outlined above, the Order specifically authorizes municipalities to identify staffing priorities and develop, modify and implement redeployment plans. These redeployment plans may be implemented despite any other statute, regulation, order, policy, arrangement, or agreement – including a collective agreement. This means that municipalities need not comply with lay-off, seniority/service or bumping provisions when implementing a redeployment plan. Aspects of a redeployment plan may include the following:

- Redeploying staff within different locations in the municipality;
- 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, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise;
- Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work;
- Using volunteers to perform work, including to perform bargaining unit work;
- Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.

The Order also provides municipalities with increased rights to collect information from staff, contractors and volunteers, including:

- Conducting skills and experience inventories of staff to identify possible alternative roles in priority areas;
- Requiring and collecting information from staff, contractors or volunteers about their availability to provide services for the municipality;
- Requiring and collecting information from staff, contractors or volunteers about their likely or actual exposure to COVID-19, or about any other health conditions that may affect their ability to provide services.

Finally, the Order allows municipalities to:

- Cancel or postpone services that are not related to responding to, preventing or alleviating the outbreak of COVID-19 or services that are not deemed to be critical by a municipality's emergency plan;
- Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.

## Note of Caution

For those municipalities that have employees represented by a bargaining agent, the Order specifically requires that the bargaining agent be provided at least 24 hours' notice before any bargaining unit employees are affected by a redeployment plan.

## 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 [Mark Van Ginke](#) at 416-408-5560, or your regular lawyer at the firm.



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