

**EXPLAINER RE: O. REG. 157/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE
EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT - WORK DEPLOYMENT
MEASURES FOR MUNICIPALITIES**

Introduction

On April 16th the government of Ontario made an “emergency order” that gives municipalities special powers, including the power to make deployment and staffing decisions even if they are contrary to a collective agreement.¹ The order authorizes municipalities to make redeployment plans to implement these powers. It also requires municipalities to provide bargaining agents representing affected employees with at least 24 hours’ notice prior to implementing these plans.

The purpose of this memo is to explain what this emergency order is, what it does and does not allow municipalities to do, and how long it may last.

What did the Province do?

In Ontario there is a law known as the *Emergency Management and Civil Protection Act* (or the *EMCPA*). The law gives the government special powers when there is a declared emergency, including the power to make “emergency orders”.

Because of COVID-19, the government of Ontario declared an emergency on March 17th. When they did this, they gained the power to make “emergency orders”. Some emergency orders have established new rules for some workplaces, like hospitals.

On April 16th, the government issued an emergency order that applies to municipalities. The order gives municipalities special powers if they have declared a state of emergency, which the City of Toronto has.

What new powers does a Municipality have?

A municipality has the power to take “any reasonably necessary measure” that is related to “work deployment and staffing” to deal with COVID-19’s impact on “critical municipal services”. A Municipality is allowed to do this notwithstanding existing collective agreement terms.

What are “critical municipal services”?

There are 11 critical municipal services, including “Public transportation services operated by the municipality”. Because we are a critical service, working in a municipality that has declared a state of emergency, we could be affected by emergency orders put in place for the purpose of protecting transportation services against the impact of COVID-19, even if the order would otherwise conflict with the collective agreement.

¹ *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Municipalities*, O. Reg. 157/20 (referred to herein as the “emergency order” or the “order”).

What are some examples of “work deployment and staffing” measures that a Municipality can take?

When municipalities take measures related to “work deployment and staffing” under the authority of the emergency order, they are not required to comply with the collective agreement. This means a municipality could, for example:

- Require members of the bargaining unit to work in different classifications or perform new duties anywhere that the Municipality provides services;
- Require members of the bargaining unit to do non-bargaining unit work;
- Have non-bargaining unit workers do bargaining unit work;
- Recruit volunteers or contractors to do bargaining unit work;
- Cancel a worker’s vacation, even if it has already been approved (or even if they are currently on vacation);
- Require a worker to work at a location different than their normal location, or to work different hours than normal;
- Ignore bumping or seniority provisions of a collective agreement in carrying out these actions.

For example, if a municipality thought that its homeless shelters (which are designated as “critical municipal services”) were too crowded given the risk of COVID-19, it could decide to open new emergency shelters. In order to staff these shelters, it could re-deploy any of its employees (e.g. cleaners, clerks, social workers, case managers, garbage collectors) to become shelter workers. It could force them to work at different times, or for a different number of hours per week, than the worker is currently assigned.

The municipality can implement this plan without complying with provisions of a collective agreement that regulate or prohibit these actions, including collective agreement provisions relating to lay-off and bumping. Also, grievances relating to these actions can be “suspended”.

What can’t a Municipality do?

There are still important limits on what a municipality can do under the order.

A municipality can only take measures related to “work deployment and staffing”. So, for example, a municipality cannot just decide to cut a worker’s hourly rate.

A municipality cannot take a measure that violates the *Occupational Health and Safety Act*. Members who believe that something that the employer is doing under their new powers gives rise to unsafe work is still entitled to make a work refusal or to contact the Ministry of Labour.

Finally, a municipality can *only* do things that are “reasonably necessary” to combat COVID-19 “so as to prevent, reduce or mitigate the effect of [COVID-19] on critical municipal services that are delivered by its employees”. It isn’t enough that a municipality wants to ignore the collective agreement. On the other hand, “reasonably necessary” is not the same thing as “absolutely necessary”. Municipalities have some flexibility in taking actions under this order.

Every case will have to be looked at separately to determine if the measures taken are in fact “reasonably necessary”.

How are redeployment plans implemented?

The order does not allow municipalities to start taking these actions without notice. The emergency order requires a municipality to give affected bargaining agents at least 24 hours’ notice prior to implementing a “redeployment plan” if the plan will affect any bargaining units.

Can unions still file grievances?

The short answer is yes.

What happens after you file a grievance will depend on the issue raised in the grievance, the nature of the redeployment plan and the language of the order effecting the redeployment plan. The municipality can “suspend” the grievance procedure *only for issues that relate to the order* and only for as long as the emergency continues. A municipality is not allowed to suspend the grievance process for workplace issues that are not related to the order.

In any case, the municipality’s power to “suspend” the grievance procedure does not prevent the filing of grievances *even if the grievance raises issues related to the order*.

Therefore, as far as the filing of grievances is concerned, the union will conduct “business as usual”.

How long will the emergency order last?

The order will only last as long as *both* the province *and* the municipality continue to declare an emergency.

Ontario’s emergency order is set to end on May 12th. However, it can be extended by the Legislature for as long as it wants. The only limit is that it can only be extended by 4-weeks at a time.

Municipal declarations of emergency end when the Mayor or the Premier say they are over.

What can members do?

Although a Municipality is required to give affected bargaining agents 24 hours’ notice before it uses any of their special powers against unionized workers, we can’t be sure that they will do this. Members should immediately report any changes announced or imposed on them to the union.