

COVID-19 AND MENTAL HEALTH AND ADDICTIONS AGENCIES

CUPE

The Government of Ontario brought in a new regulation on April 22 that authorizes community agencies to disregard certain collective agreement provisions so long as the action taken is a “reasonably necessary” measure “to respond to, prevent and alleviate” the outbreak of COVID-19, and also to “respond to consequences arising from the virus.”

The regulation covers every community-based, not-for-profit mental health and addictions agency in the province that receives funding from the Ministry of Health or a Local Health Integration Network (LHIN).

The order allows agencies to identify staffing priorities and redeployment provisions without needing to comply with collective agreement provisions, including provisions relating to layoff, seniority, and bumping. Those plans can include:

- Redeploying staff in different locations in a facility or between its facilities
- Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work
- Changing the schedules of work or shift assignments
- Deferring or cancelling vacations and other leaves, even if the leaves are statutory
- Employing part-time or temporary staff or contractors, including for the purpose of performing bargaining unit work
- Using volunteers to perform work, including bargaining unit work
- Providing appropriate training or education as needed to staff and volunteers to achieve the purpose of the redeployment plan.

In addition, employers are also permitted to:

- Conduct skills and experience inventories of staff to identify alternative roles
- Require information from staff, contractors, or volunteers about availability to provide services to the agency
- Require information from staff, contractors, or volunteers regarding likely or actual exposure to COVID-19 or other health conditions that might affect their ability to provide services

- Suspend the grievance process regarding any matter referred to in the regulation for the duration of the emergency.

SHOULD WE BE CONCERNED ABOUT THESE POWERS?

We should be concerned any time a government allows an employer to override our constitutional rights. Any powers that override collective bargaining rights could easily be abused by employers, and could be part of a larger government attack on collective bargaining rights using the current crisis as cover.

RESPONDING TO CONSEQUENCES ARISING FROM THE VIRUS

Unlike previous emergency orders, this one authorizes agencies “to respond to consequences arising from the virus.” Although the order does not explain what that means, it likely allows agencies to increase staffing and mental health and addiction services to meet an increase in demand among the general public, especially front-line healthcare workers, due to the pandemic.

What should my local do?

- Keep detailed accounts of an employer’s use of powers given by this regulation wherever the collective agreement is violated, including financial impact on the employee. This evidence will be crucial in any future legal proceedings or in negotiations with the government.
- Insist that employers using these powers explain in writing why they feel it is necessary to override the collective agreement.
- File grievances. Although the new regulation allows employers to “suspend” the grievance process, it does not prohibit grievances.
- Keep your CUPE National Staff Representative informed of violations. It is imperative that we track these violations and your staff rep may be asked to provide updates at any time.