

COVID-19 AND CRITICAL MUNICIPAL SERVICES

CUPE

The Government of Ontario brought in a new regulation on April 16 that authorizes municipal governments 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 its effects on “critical municipal services.”

The “critical services” covered by the regulation are:

- Maintenance of municipal long-term care homes
- Delivery of public health services
- Operation of homeless shelters and provision of services to homeless people
- Provision of drinking water
- Waste management and sanitation
- Wastewater management
- Public transportation operated by the municipality
- Ontario Works, if the municipality is designated as a delivery agent
- Administration, operation, and funding of childcare programs and services
- Bylaw enforcement
- Services related to the implementation of the municipality’s emergency plan

The order allows municipalities 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:

- Re-deploying 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 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, municipalities are also permitted to:

- Conduct skills and experience inventories of staff to identify alternative roles in priority areas
- Require information from staff, contractors, or volunteers about availability to provide services to the municipality
- 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
- Cancel or postpone services not related to the COVID-19 pandemic or services the municipality’s emergency plan does not deem critical
- Suspend the grievance process regarding any matter referred to in the regulation for the duration of the regulation.

To exercise powers relating to a redeployment plan, a municipality must have declared a state of emergency and **must give the union at least 24 hours’ notice.**

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.

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. 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.
- Use the 24-hour notice period to try and persuade the employer that its objectives can be accomplished without taking the extreme step of overriding the collective agreement.

