



ALBERTA

LABOUR AND IMMIGRATION
Office of the Minister

**MINISTERIAL
ORDER
No. 2020-26**

WHEREAS the Lieutenant Governor in Council made Order in Council 080/2020 under section 52.1(1) of the *Public Health Act* (PHA) on March 17, 2020 declaring a state of public health emergency in Alberta due to pandemic COVID-19 and the significant likelihood of pandemic influenza;

WHEREAS Order in Council 080/2020 has effect for 90 days following March 17, 2020 under section 52.8(1)(a) of the PHA;

WHEREAS section 52.1(3) of the PHA authorizes the Minister responsible for an enactment (Minister), to make an order without consultation, to

- (a) suspend or modify the application or operation of all or part of an enactment, subject to the terms and conditions the Minister prescribes, or
- (b) specify or set out provisions that apply in addition to, or instead of, any provision of an enactment

if the Minister is satisfied that doing so is in the public interest;

WHEREAS on April 10, 2020 the Chief Medical Officer of Health issued Order 10-2020 requiring each operator of a health care facility and each contractor operating within a health care facility to restrict the movement of staff members among health care facilities by ensuring all staff members work in only one health care facility;

WHEREAS the following principles will inform the interpretation and application of this Order:

- Prevention of transmission of the SARS-CoV-2 virus to prevent COVID-19 and the safety of residents and staff members are of paramount importance.
- Each staff member will, except as exempted by the Chief Medical Officer of Health, be allowed to work at only one site.
- It is critical to ensure there is sufficient staff at every health care facility to safely meet patient care needs.

- The goal is to maintain at least the current maximum hours in the health care system. All staff members will be encouraged to maximize their hours regardless of status.
- All reasonable efforts will be made to keep staff members whole and avoid any financial loss to due to the requirement to work at only one health care facility.
- In order to maintain site-specific knowledge and ensure continuity of care, as many staff members as possible will remain at sites where they hold a regular position.
- No staff member shall be subjected to any adverse treatment as a result of expressing preference to work at another facility.
- Staffing decisions will be supported by ongoing dialogue and problem solving among health care providers, bargaining agents (at unionized health care facilities) and staff members.

WHEREAS I am satisfied that it is in the public interest to make an order in respect of the *Labour Relations Code* (LRC) and the *Employment Standards Code* (ESC), because the LRC and ESC may impede compliance with orders issued by the Chief Medical Officer of Health to combat the spread of COVID-19;

NOW THEREFORE, I, Jason Copping, Minister of Labour and Immigration responsible for the *Labour Relations Code* and the *Employment Standards Code*, pursuant to section 52.1(2) of the *Public Health Act*, do hereby order that:

- (1) This order applies with respect to:
 - (a) Employers in their capacity as health care facilities and contractors (“employers”) and
 - (b) Employees in their capacity as staff members (“employees”).
- (2) For the purposes of (1),
 - (a) “health care facility” is defined as:
 - i. an auxiliary hospital under the *Hospitals Act*;
 - ii. a nursing home under the *Nursing Homes Act*; and
 - iii. a designated supportive living accommodation under the *Supportive Living Accommodation Licensing Act*.
 - (b) “contractor” is defined as an individual who, or corporation that, under a contract or a sub-contract with the operator of a health care facility, provides or arranges for the provision of health care services or support services within the health care facility.
 - (c) “staff member” is defined as any individual who is employed by, or provides services under a contract with, the operator of a health care facility or a contractor of the operator.

(3) The following provisions apply in addition to and notwithstanding any provision of the ESC and LRC:

- (a) Notwithstanding any agreement, including a collective agreement, for the purposes of complying with CMOH Order 10,

Selection Process

- (i) For the duration of this Order, where reasonably practicable:
 - A. All employees who only work at one health care facility will remain at that health care facility.
 - B. Regular full-time employees who work as regular part-time employees or as casuals at more than one health care facility will work at the health care facility where they are regular full-time.
 - C. Regular part-time employees who work at more than one health care facility as a casual will work at the health care facility where they have regular status.
 - D. Regular part-time employees who work at more than one health care facility as regular part-time employees will select which health care facility they wish to work at.
 - E. Casual employees who work as casual employees at more than one health care facility will select which health care facility they wish to work at.

Leave of Absence

- (ii) An employer for which the employee will no longer be providing services must
 - A. place the employee on an unpaid leave of absence,
 - B. issue the employee a Record of Employment,
 - C. maintain the employee's group and pension benefits if any, pursuant to the terms of the governing collective agreement, if any, and subject to the terms and conditions of the employee's group benefits or pension plan, if any, and
 - D. allow the employee to return to work to the same position or positions previously held within a reasonable period of time after CMOH Order 10 is no longer in effect.

Scheduling

- (iii) If a regular full-time or part-time employee's average bi-weekly hours worked at more than one health care facility between January 1, 2020 and March 31, 2020 ("combined hours") are reduced as a result of working at only one health care facility ("affected employees") and the affected employee wishes to work additional hours at the health care facility at which they continue to work, the employer shall, so far as is reasonably possible, increase the affected

employee's regularly scheduled hours of work to equal their combined hours to a maximum of a full-time-equivalent position.

- (iv) If the affected employee's combined hours exceed the hours of a full-time equivalent position, the employer at the health care facility at which the employee will continue to work shall provide the affected employee the opportunity to work additional hours as overtime, if available, on a priority basis to all other employees, volunteers or third party contractors.
- (v) Additional hours of work will be paid for at the affected employee's regular wage rate, unless the additional hours meet the definition of overtime hours in the governing collective agreement, if any, or the ESC, in which case the hours will be paid as overtime hours.
- (vi) Once an affected employee has made up their combined hours in a pay period, the affected employee will no longer be scheduled for additional hours in preference to other employees.
- (vii) If requested, the affected employee shall provide the employer with evidence of their combined hours.
- (viii) Safe patient care may require flexibility in the administration of the scheduling provisions of collective agreements.
- (ix) When necessary to ensure safe resident care, posting provisions in governing collective agreements shall not apply, provided additional hours are offered first to employees in the bargaining unit.

Compliance with this Order

- (b) For greater certainty, it is not a contravention of the LRC or ESC or an agreement, including a collective agreement, for an employer or employee or bargaining agent of an employee to comply with this Order.

Dispute Resolution

- (c) Employers, employees and bargaining agents of employees should engage in ongoing dialogue regarding the implementation of this Order and should make their best efforts to resolve any differences. Any dispute about the interpretation and/or application of the terms of this Order that cannot be resolved will be addressed before the Labour Relations Board in an expedited process determined by the Board.
- (d) The Board has all necessary jurisdiction and power, including without limitation all the powers in section 12 of the LRC, to perform the duties required to resolve any disputes that arise regarding the implementation of this Order.
- (e) Notwithstanding subsection 9(6) of the LRC, the Chair or a vice chair may sit alone to hear and decide any disputes regarding the implementation of this Order.

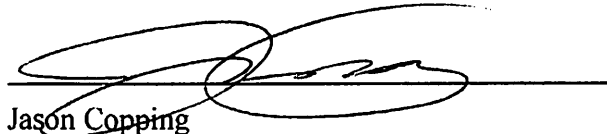
This Order comes into effect on the date set out below.

This Order repeals Labour and Immigration Ministerial Order 22.2020 effective on the date set out below.

This Order lapses, unless it is sooner continued by an order of the Lieutenant Governor in Council under section 52.811(3) of the PHA, at the earliest of the following:

- (a) 60 days after Order in Council 080/2020 lapses under section 52.8(1) of the PHA;
- (b) when this Order is terminated by the Minister under section 52.811(2) of the PHA because the Minister is satisfied that this Order is no longer in the public interest; or
- (c) when this Order is terminated by the Lieutenant Governor in Council under section 52.811(1)(c) of the PHA.

DATED at Edmonton, Alberta this 24th day of April, 2020.


Jason Copping
Minister of Labour and Immigration