

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M105

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic;

AND WHEREAS a person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;

AND WHEREAS the movement of staff between health care facilities can promote the transmission of SARS-CoV-2 and increase the risk of infection with SARS-CoV-2 of persons in care, patients, residents and staff;

AND WHEREAS in order to mitigate the risk of the transmission of SARS-CoV-2 among persons in care, patients, residents and staff of health care facilities, the provincial health officer and the medical health officer for the Vancouver Coastal Health Authority have made orders under the *Public Health Act* to limit movement of staff between long term care facilities and it is expected that further orders requiring similar measures will be made under that Act;

AND WHEREAS it is in the public interest that any orders made under the *Public Health Act* limiting the movement of staff between health care facilities be implemented by all affected health care employers and staff in accordance with the same labour adjustment terms;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster, including, by providing for, maintaining and coordinating emergency medical, welfare and other essential services throughout the Province;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that the attached Health Care Labour Adjustment (COVID-19) Order is made

April 10, 2020

Date



Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; OIC 155/2020

HEALTH CARE LABOUR ADJUSTMENT (COVID-19) ORDER

Definitions

1 (1) In this order:

“**HEABC**” means the Health Employers Association of British Columbia;

“**health care employer**” means the following:

- (a) a registrant of an assisted living residence within the meaning of the *Community Care and Assisted Living Act*;
- (b) a licensee or operator of a community care facility within the meaning of the *Community Care and Assisted Living Act* that provides the type of care prescribed under section 2 (2) (c) of the Residential Care Regulation, B.C. Reg. 96/2009;
- (c) the board of management or an operator of a hospital within the meaning of section 1 of the *Hospital Act*;
- (d) a licensee or operator of a private hospital licensed under Part 2 of the *Hospital Act*;
- (e) an operator of a Provincial mental health facility, as defined in section 1 of the *Mental Health Act*;
- (f) a contractor or sub-contractor who provides staff at a facility referred to in paragraph (a), (b), (c), (d) or (e);

“**health officer**” means the provincial health officer or a medical health officer within the meaning of the *Public Health Act*;

“**labour adjustment terms**”, except in the Schedule, means,

- (a) in relation to any non-unionized staff of a specified health care employer, the terms set out at paragraphs 5 to 8 and 10 to 13 of the single site transition framework, and
- (b) in relation to any unionized staff of a specified health care employer and any bargaining agent representing unionized staff of a specified health care employer, the terms set out at paragraphs 5 to 13 of the single site transition framework;

“**single site order**” means an order made by a health officer under the *Public Health Act* with respect to the COVID-19 pandemic requiring one or more of the following:

- (a) a health care employer to restrict the movement of staff between facilities by ensuring that staff only work at one facility;
- (b) a health care employer to direct staff to work at the facility that the staff are assigned to by a health officer;
- (c) a health care employer to not permit staff to work at a facility unless the staff have been assigned to work at the facility by a health officer;
- (d) staff of a health care employer to comply with assignments of a health officer with respect to the facility at which the staff are to work;

“**single site transition framework**” means the agreement respecting the implementation of single site orders, substantially in the form set out in the

Schedule to this order, entered into by the Minister of Health, on behalf of the government, the HEABC, the bargaining associations representing unionized staff of members of the HEABC and the bargaining agents representing unionized staff of specified health care employers;

“specified health care employer” means a health care employer who is not a party to the single site transition framework;

“staff”, in relation to a health care employer, means

- (a) an employee of the health care employer, or
- (b) a person providing services under contract to the health care employer.

(2) For the purposes of the definition of **“labour adjustment terms”**, the terms referred to in that definition include any processes and principles developed or negotiated by the parties to the single site transition framework under paragraphs 8 (d), 11, 12 and 13 of the single site transition framework.

Application

2 This order applies during the period that starts on the date this order is made and ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* expires or is cancelled.

Labour adjustment terms apply to specified health care employers, staff and related bargaining agents

3 (1) If a health officer makes a single site order in respect of a specified health care employer and its staff, each of the following must implement the single site order in accordance with the labour adjustment terms:

- (a) the specified health care employer;
- (b) the staff of the specified health care employer;
- (c) any bargaining agent representing unionized staff of the specified health care employer.

(2) For the purposes of subsection (1) and to facilitate implementation of the single site order, the labour adjustment terms apply to the specified health care employer, its staff and any bargaining agent representing unionized staff of the specified health care employer.

(3) For certainty, nothing in subsection (2) is to be construed as having the effect of making any of the specified health care employer, its staff or any bargaining agent representing unionized staff of the specified health care employer a party to the single site transition framework.

SCHEDULE

Single Site Transition Framework

MOH – HEABC – Bargaining Associations – HEU/HAS/BCNU/BCGEU

All terms agreed to by HEABC, CBA/BCGEU, FBA/HEU, HSPBA/HSA, and NBA/BCNU as of April 5, 2020, subject to the agreement of the Ministry of Health

The PHO Data Collection Order

1. Pursuant to the *Public Health Act*, on March 26, 2020, the Provincial Health Officer (“PHO”) issued an Order re: Information Collection to Allocate Staff Working in Facilities (the “Data Collection Order”). The purpose of the Data Collection Order is to mitigate the risk of the transmission of SARS-CoV-2 among persons in care, patients, residents and staff. The PHO deemed it necessary to obtain personal and employment related information about staff to support decisions about the allocation of staff among facilities in accordance with the principles set out in Appendix A.
2. The Data Collection Order sets out the following principles and process at Appendix A:
 1. *Prevention of transmission of the SARS-CoV-2 virus to prevent COVID-19 is of paramount importance.*
 2. *Staffing decisions will be supported by ongoing dialogue and problem solving among the PHO, Ministry of Health, Health Employers Association of BC (“HEABC”), Bargaining Associations and unions representing employees at non-HEABC employers.*
 3. *Each staff will for the most part only be allowed to work at one site. If for operational reasons it is not feasible for all staff in all settings and/or geographies to work only at one site, exceptions may be made by the PHO.*
 4. *It is critical to ensure there is sufficient staff at every worksite to safely meet patient care needs.*
 5. *Where practicable worker preference regarding site selection will be considered.*

6. *The goal is to maintain at least the current maximum hours in the health care system. All employees will be encouraged to maximize their hours regardless of status.*
7. *Regular part-time and casual employees will have access to and be encouraged to work regularly scheduled full-time hours, subject to the operational needs of the facility.*
8. *In order to maintain site-specific knowledge and ensure continuity of care, as many employees as possible will remain at sites where they hold a regular position.*
9. *Employers will prioritize safety, training and support for staff to protect against spread of COVID-19. This includes training on infection control, administrative and engineering controls and providing access to appropriate PPE.*
10. *No employee shall be subjected to any adverse treatment as a result of expressing preference to work at another facility.*
11. *The principle of seniority must be adhered to in the application of this order wherever practicable.*
12. *Data protection: All data collected will only be used for the purposes of allocation of staff to lessen the risk of the transmission of SARS-CoV-2 between worksites in the context of the response to the COVID-19 outbreak, and will be transferred and stored using reasonable security measures.*

Process

The PHO will review staffing requirements and available staff resources for each worksite, in accordance with the principles set out above and in accordance with any further Orders of the PHO, to determine the staff cohort for each worksite.

Additional Worksite Assignment Principles and Process

3. In light of the Appendix A principles (#2, #5 and #8) of the Data Collection Order, HEABC and the bargaining associations (NBA, HSPBA, FBA, CBA) as well as HEU, HSA, BCGEU, BCNU in their capacity as unions representing employees at non-HEABC employers, agree to recommend the following as the foundation for analysis to inform the decision-making process by the PHO:
 - a. All employees who only work at one worksite will be assigned to remain at that worksite.
 - b. Regular full time employees who work as regular part time employees or as casuals at another worksite(s) will be assigned to the worksite where they are regular full time.
 - c. Regular part time employees who work at another worksite(s) as regular part time employees will be asked to rank their preference of worksite.
 - d. Regular part time employees who work at another worksite(s) as a casual will be asked to rank their preference; however, such employees will usually be assigned to the worksite where they have regular status.
 - e. Casual employees who work as casual employees at another worksite(s) will be asked to rank their worksite preference.

Labour Adjustment Terms

4. HEABC, MOH and the bargaining associations (NBA, HSPBA, FBA, CBA) as well as HEU, HSA, BCGEU, BCNU in their capacity as unions representing employees at non-HEABC employers, agree to recommend the following labour adjustment terms (the “Labour Adjustment Terms”) as part of facilitation of any further orders with respect to the public health emergency and the provincial state of emergency that has been declared, related to a further PHO order limiting staff to work at a single worksite (the “Single Site Order”). Further, HEABC and the bargaining associations (NBA, HSPBA, FBA, CBA) agree to the following to facilitate implementation of the PHO’s orders for purposes of the health sector agreements between HEABC, NBA, HSPBA, FBA and CBA if these Labour Adjustment Terms are adopted as recommended for the general implementation of the Single Site Order.
5. Wage Rates
 - a. All employees limited to working at a single worksite under the Single Site Order are to receive hourly wages equivalent to the applicable HEABC collective agreement for the duration of the single worksite restriction period.
6. Increment Steps

- a. Where an employee who works at multiple worksites and is restricted by the Single Site Order to work at one worksite, the employee will be paid the highest increment step he or she receives working at another worksite.
7. Employees will retain at least their combined FTE
 - a. Employees who currently work at multiple sites will be scheduled to work their total combined hours at the single site, up to a maximum of 1.3 FTE. Daily and weekly overtime under the applicable collective agreement will apply for all hours worked beyond the scheduled hours of their new regular position (combined FTE up to 1.3 FTE).
 8. Employment and Benefits Continuance
 - a. All employees will retain their employment at worksites/employers where they are currently employed and in recognition of employer concern about their exposure to others, will be placed on a COVID-related unpaid leave of absence under s. 52.12(2)(c) of the Employment Standards Act for the duration of the single-site limitation.
 - b. Employees will accrue service and seniority for purposes of perquisites and leave banks pursuant to the applicable collective agreement at the worksite where they are assigned for all hours/service worked. Regular employees whose combined hours exceed a regular 1.0 FTE will accumulate seniority hours up to maximum number of hours equivalent to a regular 1.0 FTE (eg. 1950, 2000 or 2080).
 - c. No employee's status will change as a result of the Single Site Order.
 - d. The parties will develop a process to ensure updated seniority lists are available to employers and unions on an urgent basis in order to facilitate the process for developing an initial, emergency schedule, immediately following the issuance of the Single Site Order.
 - e. Benefits coverage and eligibility will be maintained by the employer at the worksite from which employees are restricted from working under the Single Site Order. Eligible employees will be entitled to enroll in the benefit plans at the site at which they are limited to working at under the Single Site Order, should they so choose. Service will be recognized for purposes of pension plans in accordance with statutory requirements and contributions will be made in accordance with those requirements and the terms of the pension plans applicable to the employee.
 - f. At the cessation of the Single Site Order, and when employees, return to their multi-site location(s), they will retain their relative placement on the seniority list when the Single Site Order is rescinded. (i.e. If an employee was 14th on the seniority list as of the date of Single Site Order they will be

placed in 14th position on the seniority list upon termination of the Single Site Order).

9. Schedule determination

- a. In order to determine an initial, emergency schedule, the employer will:
 - i. Maintain the current schedule for all employees who remain at the worksite and have scheduled hours;
 - ii. Identify all shift gaps in the current schedule by job classification;
 - iii. Offer identified shift gaps to employees as follows:

Round 1: by seniority, regular employees who previously worked at multiple worksites and who are limited to working at a single worksite can select from shift gaps up to their combined FTE at straight time;

Round 2: by seniority, other regular and casual employees can select any remaining regular shifts at straight time.
- b. Following completion of the emergency scheduling process, the Employer will offer any unfilled shifts to employees in accordance with the collective agreement.
- c. During the first 90 days, the employer will work with the union to develop a more robust process to determine a new schedule for all regular employees for the duration of the Single Site Order.

10. Postings

- a. Any posted positions will be temporary. No permanent positions will be posted for the duration of the Single Site Order.

11. On-going Redeployment

- a. The parties will develop a process through which to recommend to the PHO exemptions to the Single Site Order to address staffing concerns at a particular site or personal or family obligations of employees.

12. Repatriation to Original Worksites

- a. 90 days following implementation of the Single Site Order, the parties will meet to develop a process and principles that apply to the return of all employees to active employment at all worksites where they were employed prior to the implementation of the Single Site Order, including a process by which employees, upon return to active employment at all

employers, can utilize accumulated leave banks, without penalty, at sites where they were restricted from working under the Single Site Order.

13. Issues Management and Dispute Resolution

- a. There will be a process to address any issues or disputes arising from the Labour Adjustment Terms. This will include a process to address any issues arising from erroneous or incomplete information about employees held by employers on an expedited basis. The parties agree to meet and agree to a dispute resolution process within 30 days of issuance of the Single Site Order.
- b. Any dispute about the interpretation and/or application of the Labour Adjustment Terms will be addressed in an expedited process to be negotiated between HEABC and the Bargaining Associations.

14. Labour Adjustment Plan Review

- a. Within six months of the Single Site Order, the parties will meet to review and discuss any proposed changes regarding the Labour Adjustment Terms.

X

CBA & BCGEU

X

FBA & HEU

X

HSA & HSPBA

X

NBA & BCNU

X

HEABC

X

Province of British Columbia
as represented by the Ministry of Health