

Emergency powers (Reg 74/20) and your collective agreement

When COVID hit in March 2020, Ontario declared a state of emergency. One of the first things they did was to make special rules for hospitals. These rules are called “Regulation 74/20”.

Regulation 74/20 allows hospitals to change some workplace rules, even if the collective agreement does not allow it. Sometimes, hospitals can take away your collective agreement rights if they need to because of COVID.

However, hospitals are not allowed to do anything that they want. They have to try to follow the collective agreement, unless COVID makes it necessary for them not to.

This document explains what Regulation 74/20 does, and what you should know to make sure that your rights are respected.

What is Regulation 74/20?

Regulation 74/20 is a set of special rules made by the government because of COVID-19. It applies specifically to hospitals. It is supposed to help hospitals deal with the COVID-19 pandemic and to help patients. Regulation 74/20 is only temporary, but we do not know when the government will remove it.

What does Regulation 74/20 do?

Regulation 74/20 allows hospitals to make changes to “work deployment and staffing” in order to respond to, prevent or reduce the impact of COVID on patients. When they use these powers, they do not have to follow the rules in the collective agreement.

Examples of work deployment and staffing changes include:

- Change where you are assigned to work
- Send you to work at a different hospital, or at a long-term care home or a retirement home
- Change your work schedule
- Change your job duties
- Assign someone who is not in the union to do union work, including using volunteers
- Cancelling or changing your vacation or leaves of absence
- Require you to give your boss information about whether you have been exposed to COVID, or other medical information

If you are moved to work at a different place, like a long-term care home or a retirement home, you are still employed by your hospital.



When can Hospitals use Regulation 74/20?

Hospitals are only allowed to use their powers when it is “reasonably necessary” to do so in order to respond to COVID problems.

They cannot use these powers to solve problems they have that are not related to COVID.

They also cannot use these powers unless it is reasonably necessary to. This means that if the hospital could deal with COVID-related problems without breaking the collective agreement, they should follow the collective agreement.

Hospitals can also only use these powers as long as Regulation 74/20 continues to exist. When Regulation 74/20 expires, hospitals will have to go back to following the collective agreement all of the time.

What other limits are there on what hospitals can do under Regulation 74/20?

Even though hospitals can ignore the collective agreement, there are some rules that they do have to follow no matter what.

Hospitals have to follow the *Occupational Health and Safety Act*. This means that they are not allowed to make you do work that is not safe. If you think your employer is ordering you to do unsafe work, talk to your union. You can also complain to the Ministry of Labour.

Hospitals also have to follow the *Human Rights Code*. This means that they cannot treat you worse than other employees because of your sex, race, age, sexual orientation, religion, or other “protected grounds”. If you think your employer is discriminating against you, talk to your union.

What should I do if my employer uses Regulation 74/20 to change my work?

Hospitals have used Regulation 74/20 to make a lot of changes to workers’ jobs. Many of these changes have not followed collective agreement rules. Hospitals have always said that they are allowed to make changes because of Regulation 74/20, but sometimes they are wrong.

Hospitals can only ignore your collective agreement if two things are true:

1. The change they are making has to do with “work deployment and staffing”
2. The change is “reasonably necessary” to respond to COVID

If either of these things is not true, then the hospital has to follow the collective agreement.

An example of a change that is not about work deployment and staffing is rules about pay. The hospital is not allowed to change your pay. The hospital has to follow rules about overtime pay.

It is hard to know whether a change in rules is “reasonably necessary” to respond to COVID. The words “reasonably necessary” does just mean “convenient” or “helpful”. It also does not mean “absolutely necessary”. It is somewhere in between.

To know if a rule change is “reasonably necessary” it is important to think about everything that is going on at the hospital.

Some things that will probably be relevant to think about are:

- Why has the hospital decided to make a change?
- Does the reason that they give make sense?
- Do the changes have anything to do with helping COVID patients?
- Does the hospital have a COVID outbreak?
- Does your work have anything to do with COVID or COVID patients?
- Has the hospital tried to follow the collective agreement before making this change?
- Do you think the hospital could follow the collective agreement and still deal with the COVID problem that they are trying to solve?
- Even if the hospital can’t follow the collective agreement, are they breaking the rules as little as possible?

If your employer tells you that they are using Regulation 74/20 to change your work in a way that breaks the collective agreement, you should tell your union as soon as possible. You should listen to any reason that the hospital gives you for the rule change and try to remember as much detail as possible. You may want to ask questions to help you understand what changes are being made, and why.

The more information you can give your union, the more your union can do to try to help you.