



Office of the Minister
MLA, Calgary - Varsity

M.O. 635/2021

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 the Chief Medical Officer of Health made Record of Decision – CMOH Order 10-2020 (“Single Site Order”) under section 29(2.1) of the PHA on April 10, 2020 restricting staff member movement among certain health care facilities in order to lessen the impact of the public health emergency caused by COVID-19;

WHEREAS the Minister of Labour and Immigration made Ministerial Order No. 2020-26 (“MO 2020-26”) under section 52.1(2) of the PHA on April 24, 2020 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, including the Single Site Order;

WHEREAS the Chief Medical Officer of Health made Record of Decision – CMOH Order 38-2021 which modified the Single Site Order on July 13, 2021 to continue to restrict staff member movement among certain health care facilities, but indicated in the Appendix to the Order that planning was underway to ease the Single Site Order restrictions for fully vaccinated staff members;

WHEREAS Alberta Health Services, a regional health authority under the *Regional Health Authorities Act*, implemented a policy on September 14, 2021 to set out worker immunization requirements for COVID-19 (“Policy”) which requires all workers to be fully immunized against COVID-19 by October 31, 2021 in order to protect the health and safety of workers, patients, and the communities Alberta Health Services serves;

WHEREAS Alberta Health Services revised its Policy on October 22, 2021 to require all workers to be fully immunized against COVID-19 by November 30, 2021;

WHEREAS in October 2021 the Ministry of Labour and Immigration engaged the parties affected by the Single Site Order in order to establish a process to return staff members to working at multiple health care facilities as of February 16, 2022;

WHEREAS the process was developed with input from unions and employers in the sector in recognition that a consistent and equitable process must be developed to facilitate the return of staff members working at multiple health care facilities;

WHEREAS under section 16(b) of the *Regional Health Authorities Act*, the Minister of Health may, if the Minister considers that it is in the public interest to do so, do any other thing that the Minister considers necessary to promote and ensure the provisions of health services in Alberta;

WHEREAS under section 11(1)(ee) of the *Designation and Transfer of Responsibility Regulation*, the Minister of Health is responsible for the *Regional Health Authorities Act*;

WHEREAS the Minister of Health considers it in the public interest and necessary to enable an orderly transition for the parties affected by the Single Site Order to ensure that Albertans residing in health care facilities are provided with continual and minimally interrupted health services; and

WHEREAS the Minister of Health considers it in the public interest and necessary to ensure that the parties affected by the Single Site Order all follow a mandatory process to transition away from the Single Site Order and allow staff members to return to work at multiple sites;

THEREFORE, I, JASON COPPING, Minister of Health pursuant to section 16(b) of the *Regional Health Authorities 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 purposes of section 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. Employers and employees subject to Record of Decision – CMOH Order 10-2020 as modified by Record of Decision – CMOH Order 38-2021, including any employers and employees who were exempted from the application of the Orders by the Chief Medical Officer of Health, must comply with the process set out in Appendix A to this Order.

This Order comes into effect on the coming into force of the *Labour Relations Code Transitional Regulation*, Alta Reg 236/2021.

DATED at *Edmonton*, Alberta this *1st* day of *December*, 2021.


JASON COPPING
MINISTER

APPENDIX A to M.O. 635/2021**Definitions**

These definitions are for the purpose of the process set out in this Appendix A.

- a) "Casual status" is a status held by an employee who worked for either the previous employer or the single-site employer.
- b) "Discretionary leave" means a leave granted by the single site employer, that is not a single site leave of absence ("single site LOA") nor a job protected leave as defined under clause d).
- c) "Full-time Equivalent" or "FTE" refers to the proportion of hours an employee is entitled to be scheduled, calculated relative to a full-time position (1.0 FTE), under an employment agreement, including a collective agreement. For greater certainty, an employee with casual status in regards to a particular employer has a zero FTE.
- d) "Job protected leave" means a statutory leave of absence under the *Employment Standards Code* or associated Regulation.
- e) "MO 2020-26" means Ministerial Order No. 2020-26 made by the Minister of Labour and Immigration on April 24, 2020.
- f) "Previous employer" is the employer or employers where an employee held either a permanent position or casual status prior to the coming into force of the single site order. For greater certainty, this includes an employee's single site employer, if the employee was employed by that employer prior to the single site order. For greater certainty, it is understood that an employee remains an employee of the previous employer, but is considered to be on a leave of absence pursuant to MO 2020-26.
- g) "Previous position" is the position or positions that the employee held immediately prior to the coming into force of the single site LOA under clause i). For greater certainty, for a part time or a full time permanent employee, this is the FTE the employee held prior to the coming into force of the single site order. For a casual employee, this is their casual status held prior to the coming into force of the single site order.
- h) "Single-site employer" is the employer the employee worked for under the single site order. For greater certainty, an employee may have held either a permanent position or casual status with the employee's single site employer prior to the coming into force of the single site order and therefore was not placed on a single site LOA with that employer.

- i) "Single site LOA" means the leave of absence a previous employer placed an employee on pursuant to clause 3(a)(ii)(A) of MO 2020-26.
- j) "Single site order" means Record of Decision – CMOH Order 10-2020 as modified by Record of Decision – CMOH Order 38-2021.
- k) "Single-site position" is the position the employee has with the single-site employer.

General principles to return employees to working at multiple facilities

- a) Parties should follow collective agreements or terms or conditions of employment unless they conflict with the process, in which case the process should be followed.
- b) The objective is to return employees to their previous position through a fair and equitable approach.
- c) This process should not be used to unjustly enrich or benefit either the employers or the employees.

Notification of intent to return to previous position and continued employment with single site employer

1. By December 9, 2021, a previous employer must contact each of their employees who are subject to the single site order to inform the employee that the employee has until December 23, 2021 to provide written notice to the previous employer as to whether the employee intends to return to their previous position with that employer.
2. In addition to informing their previous employer whether they intend to return to their previous position, if an employee is on a job-protected leave with their single site employer that will extend beyond February 15, 2022, the employee must notify their previous employer in writing of their job-protected leave and provide any proof of entitlement to the leave required under the *Employment Standards Code*. Employers shall accept this notice as sufficient to meet the notice requirements to commence leave under the *Employment Standards Code*.
 - a. If possible, the employee must provide their written notice to their previous employer by December 23, 2021 indicating whether they intend to return to their previous position when their job protected leave ends.
 - b. If the employee is not able to provide written notice to their previous employer by December 23, 2021, the employee must provide the required notice to return as required under the *Employment Standards Code*.

3. If an employee who is contacted by a previous employer is on a discretionary leave with their single site employer that will extend beyond February 15, 2022, and the employee wants their previous employer to grant the same discretionary leave to the employee, the employee must, on or before December 23, 2021, provide a written request to their previous employer to approve the employee continuing to be on a discretionary leave of absence. When the previous employer receives the employee's request, the employer must contact the employee to discuss their discretionary leave request and must not unreasonably deny the employee's request for a continuation of the discretionary leave.
4. An employee should ensure that their previous employer has the employee's updated contact information. Efforts made by an employee or an employer to contact one another regarding notification of intent to return to a previous position should be documented by both parties.
5. If an employee is employed by a single site employer that is not the employee's previous employer, the employee's employment with the single site employer may continue provided that the following conditions are met:
 - a. the single site employer offers the employee continued employment; and
 - b. the employee accepts the offer on or before February 15, 2022.

Deemed Resignation of Employment

6. All single sites LOAs, regardless of whether an employee has notified a previous employer that they intend to return to their previous position, shall no longer continue after February 15, 2022 by operation of law.
7. An employee's employment shall be concluded with a previous employer as of February 15, 2022 in accordance with sections 8 to 11 of this process.
8. Subject to section 2 above (i.e. statutory leaves), an employee is deemed to have resigned from their previous position with their previous employer effective February 16, 2022, if either of the following occurs:
 - a. The employee does not provide written notice to their previous employer by February 15, 2022 of the employee's intention to return to their previous position with their previous employer; or
 - b. The employee provides written notice to their previous employer by February 15, 2022 that the employee does not intend to return to their previous position with their previous employer.
9. Prior to deeming an employee to have resigned in accordance with section 8, a previous employer must make reasonable efforts to contact the employee.

10. An employer is responsible for notifying an employee prior to proceeding with processing the employee's resignation.
11. Upon an employee having been deemed to have resigned their position with a previous employer as per section 8 to 10, any entitlements accrued by the employee from that previous employer from which they resigned, such as vacation, banked overtime and/or general holiday pay, shall not be transferred to other employers and shall be paid out by the previous employer from which the employee earned the entitlements and is deemed to have resigned.

Schedule Development

12. A previous employer that does not receive written notice of an employee intending to return to their previous position is not obligated to schedule the employee when developing schedules for work on or after February 16, 2022.
13. Upon receiving an employee's notice of intent to return to their previous position, the previous employer must develop a schedule that includes the employee for work on or after February 16, 2022. If an employee has multiple employers, it is up to the employee to coordinate its scheduling with the multiple employers.
14. A previous employer must schedule a returning employee at no less than the FTE the employee was entitled to under their previous position.
15. Scheduling of additional hours for an "affected employee" as defined in and in accordance with MO 2020-26 clause (3)(a)(iii) to (vi) shall no longer continue after February 15, 2022 by operation of law.

Notification of Schedules

16. An employer shall provide at least 2 weeks' written notice:
 - a. To an employee returning to their previous position, with information on their new schedule that takes effect on February 16, 2022; and
 - b. To an employee receiving additional hours pursuant to MO 2020-26 clause (3)(a)(iii) to (vi), that additional scheduled hours shall end after February 15, 2022.
17. Unless an employer and its employees are subject to an exemption to the single site order granted by the Chief Medical Officer of Health, an employee is not permitted to return to their previous position prior to February 16, 2022.

Returning to Previous Employers

18. An employee must return to the same FTE they held prior to the single site order. For greater certainty, where the previous employer is also the single site employer for an employee, the employee will return to their previous position effective Feb 16, 2022 and will no longer be entitled to additional hours under MO 2020-26 clause (3)(a)(iii) to (vi), unless they have been successful in a new position.
19. An employee who is seeking changes to their FTE, such as fewer or more hours shall, after their return, follow any applicable process including those outlined in employment agreements, collective agreements or workplace policies. If an employee has received a promotion with an employer, it shall only be maintained at that employer.
20. A previous employer may only make changes to an employee's FTE, such as fewer or more hours, after the employee's return, and by following any applicable process including those outlined in any applicable employment agreements, collective agreements or workplace policies.
21. If an employee returns to their previous position, after being placed on a single site LOA for that position, pay and benefits are as follows provided the employee was actively working at the single-site employer during the single site LOA:
 - a. An employee's wage rates must be at least equivalent to their basic rate of pay (not including pay premiums) prior to the single site order. An employee is also entitled to any wage increases under employment agreements, collective agreements or workplace policies that may apply to their previous position.
 - b. An employee's annual vacation entitlements must be at least equivalent to what the employee was entitled to receive prior to the single site order. An employee is also entitled to any increase in vacation entitlement under employment agreements, collective agreements or workplace policies that may apply to their previous position.
 - i. Vacation accrued by an employee in their previous position that was not paid out shall be accessible to the employee upon return to their previous position.
 - c. An employee's pension entitlements shall be determined in accordance with the employment agreement, collective agreement, and pension and tax rules. An employee who may be entitled to "buy back" any pension contribution needs to address this with their previous employer and pension provider.

- d. An employee's benefit entitlements shall be instituted in accordance with the benefit plan currently in place with the previous employer prior to the employee being subject to the single site LOA. An employee must not be required to serve a waiting period to access these benefits.
- e. An employee's accrued paid sick leave entitlements not utilized prior to the employee being subject to the single site LOA must be accessible to the employee upon returning to their previous position. Paid sick leave entitlements accrued by an employee while employed by their single-site employer cannot be transferred to a previous or any other employer.
- f. If an employee's seniority is calculated on an 'hours-worked basis', the employee shall receive credit towards their seniority for the duration of their single site LOA at the FTE of their previous position. If an employee's seniority is calculated based on an employee's hire date, the employee's seniority date shall not be changed upon the employee's return.

22. Subject to section 21 above, an employee's entitlements that would have accrued under an employment agreement or collective agreement, at the employee's previous position with their previous employer as if the employee had not been placed on the single site LOA, shall count towards the employee's length of employment upon their return to their previous position for the purposes of determining steps on the wage grid, seniority, entitlement to vacation, and termination notice and pay.

- a. If requested by an employee, within 28 days of returning to their previous position, who regularly worked additional hours at a previous position of greater than 0.2 FTE prior to being placed on a single site LOA, the previous employer must review the hours worked by the employee between January 1, 2020 and March 31, 2020 and use those hours as an indicator of the number of additional hours worked. These hours must be used to determine adjustments to seniority or other entitlements, as required. This process must also be used to calculate adjustments for a casual status employee. When requested, an employee must be notified of the results of the hours of work review.

Remaining with Single-Site Employers

23. Any entitlements accrued by an employee at the single-site employer are still accessible to the employee if they continue their employment at their single-site employer.

Single-Site Employers with Multiple Sites

24. When an employee worked for a previous employer with multiple worksites subject to the single site order, that employer's employment agreement, collective agreement, or workplace policies shall continue to apply.
25. For an employer that has different collective agreements at some or all of their sites, it must follow the process outlined in this document.

Compliance with the Process

26. The parties must follow this process and shall not offer enticements to retain or recruit employees currently on a single site LOA during this process.
27. In accordance with s. 2(3) of the *Labour Relations Code Transitional Regulation*, Alta Reg 236/2021, it is not a contravention of the *Labour Relations Code* or a collective agreement, for an employer or bargaining agent of an employee to comply with the process set out in this Appendix A.

Dispute resolution mechanism

28. A dispute in respect of this Order may be referred to the Labour Relations Board in accordance with s. 3(1) of the *Labour Relations Code Transitional Regulation*, Alta Reg 236/2021.