

## MINISTERIAL ORDER 2021-024: CLARIFICATIONS AND RIGHTS

### Ministerial orders: rights and recourses

A ministerial order is an administrative act issued by a minister. It must be based on the enactment of an order-in-council or a law. Ministerial Order 2021-024 is based on section 118 of the Public Health Act and Order-in-Council 177-2020 dated March 13, 2020, which declared the public health emergency.

The ministerial order states that it was amending “the national and local provisions of the collective agreements applicable in the health and social services network, and the [applicable] employment conditions.” The order does not invalidate the entire collective agreement, but only amends the points identified. In addition, since a ministerial order does not take precedence over other laws, its provisions can be contested in court. Further, unions have the power to contest how their employers apply it.

### Work settings impacted by Ministerial Order 2021-024:

- 1) Emergency units, except psychiatric emergency units;
- 2) Intensive care units, except psychiatric intensive care units;
- 3) Clinics specific to COVID-19, including screening, evaluation and vaccination clinics;
- 4) Units identified by an institution as reserved for persons with a positive COVID-19 diagnosis;
- 5) Residential and long-term care centres;
- 6) Other residential units (such as in youth centres, or continuous assistance);
- 7) Pneumology units.

The ministerial order does not apply to employees who work in administrative services and have no direct contact with users.



Ministerial Order 2021-024 requires all employees to provide their employers with proof of having received a COVID-19 vaccine dose, if applicable:

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- 1) The following salaried persons must have no fewer than three COVID-19 screening tests per week and provide the test results to their employer (preferably saliva-based rapid tests):
    - a) a salaried person who has received a COVID-19 vaccine dose less than 14 days previously;
    - b) a salaried person who has not received a COVID-19 vaccine dose or who refuses to provide the employer with proof of such vaccination;
  - 2) Any salaried person who refuses or neglects to have a mandatory screening test or to provide the results must, when possible, be reassigned to duties within the person's job title but in an environment different from that contemplated in the ministerial order.

### Application of the ministerial order

Since the ministerial order does not affect clause 30.03 of the collective agreement, the tests must be administered during work hours. If that is impossible, the employer must compensate employees at the applicable rate if they get tested outside of their work hours. In addition, the employer must reimburse their transportation costs.

Any employee who does not provide proof of vaccination and refuses to be tested will be reassigned when possible (location(s) and work shift(s) at the employer's discretion). If reassignment is not possible or the employee refuses it, the employee may not return to their work environment and will receive no remuneration.

Employees will be able to return to their work setting:

- 1) If they have had a COVID-19 screening test and provide the employer with a negative result;
- 2) If they received a COVID-19 vaccine dose and provided the employer with proof to that effect;
- 3) If the ministerial order is no longer in force.

### Application of the ministerial order to specific employee situations:

Part-time employees working less than three days per week: must be tested once per work shift.

Reassignment outside of home base: employer must reimburse travel costs.

Medical reason for not receiving the COVID-19 vaccine: must undergo screening tests and provide proof of negative tests.

Refuses reassignment: in addition to not going back to their work setting and losing their remuneration, they expose themselves to disciplinary measures.

Contracted COVID-19 and not previously vaccinated: not required to be screened within 90 days following appearance of the first symptom associated with the infection, or, if asymptomatic, following the date of the positive screening test.

