



PLEASE NOTE

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For more information concerning the history of this Act, please see the [*Table of Public Acts*](#).

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CHAPTER H-1.4

HEALTH AUTHORITIES' EMPLOYEES ACT

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|---|--------------------------------------|
| 1. In this Act | Definitions |
| (a) "collective agreement" means any collective agreement containing terms and conditions of employment, including any collective agreement negotiated | collective agreement |
| (i) for employees under Part XV of the <i>Civil Service Act</i> R.S.P.E.I. 1988, Cap. C-8 Regulations, | |
| (ii) for employees under the <i>Labour Act</i> R.S.P.E.I. 1988, Cap. L-1, and | |
| (iii) with the Medical Society; | |
| (b) "collective bargaining" includes, as well as negotiation with a view to concluding a collective agreement, enforcement and other administration of the terms of a collective agreement; | collective bargaining |
| (c) "Department" means the Department of Health and Social Services; | Department |
| (d) "health authority" means | health authority |
| (i) a regional authority, and | |
| (ii) the Provincial Health Services Authority; | |
| (e) "mediator-arbitrator" means the mediator-arbitrator appointed under section 12; | mediator-arbitrator |
| (f) "Minister" means the Minister of Health and Social Services; | Minister |
| (g) "negotiation committee" means a negotiation committee constituted under section 11; | negotiation committee |
| (h) "Provincial Health Services Authority" means the Provincial Health Services Authority as defined in the <i>Health and Community Services Act</i> R.S.P.E.I. 1988, Cap. H-1.1; | Provincial Health Services Authority |
| (i) "regional authority" means a regional authority as defined in the <i>Health and Community Services Act</i> , 2005,c.41,s.1. | regional health authority |
| 2. This Act and any regulations made hereunder apply notwithstanding anything to the contrary in the provisions of the <i>Civil Service Act</i>, the <i>Civil Service Superannuation Act</i> R.S.P.E.I. 1988, Cap. C-9, the regulations made under those Acts or any other enactment, and in the event of an inconsistency between a provision of this Act or the regulations and a provision of the <i>Civil Service Act</i>, the <i>Civil Service Superannuation Act</i>, the regulations made under those Acts or any other | Conflict |

enactment, the provisions of this Act or the regulations shall prevail. 2005,c.41,s.2.

Purposes

3. The purposes of this Act are

- (a) to provide for the orderly transfer of all employees of the health authorities that employed them immediately prior to the coming into force of this Act into the Department that will employ them thereafter; and
- (b) to temporarily continue terms and conditions of employment and collective bargaining relationships in respect of these employees. 2005,c.41,s.3.

Transfer of excluded employees to Department and civil service

4. (1) On the coming into force of this subsection, all persons who, immediately before this Act comes into force,

- (a) are employees of the health authorities;
- (b) are subject to the Personnel Policy for Excluded Employees of the Health Authorities; and
- (c) hold positions or have duties at the health authorities of a type or class determined by the Minister,

cease to be employees of the health authorities and are hereby transferred, without compensation, to the Department and to the civil service of the province, and are subject to the *Civil Service Act*.

Permanent excluded employees

(2) A person who is transferred to the civil service under subsection (1) and who held a permanent position as an employee of a health authority is deemed, on the coming into force of this subsection, to hold a classified position in the civil service as an excluded employee.

Transfer of employees in unions to Department

(3) On the coming into force of this subsection, all persons who,

- (a) are employees of the health authorities; and
- (b) are represented by a union referred to in subsections 7(1) to (5),

cease to be employees of the health authorities and are hereby transferred, without compensation, to the Department.

Status of employees in unions

(4) For greater certainty, on the coming into force of this subsection, all persons who are transferred to the Department under subsection (3) are not transferred to the civil service of the province and, subject to this Act,

- (a) the *Civil Service Act* does not apply to such persons; and
- (b) the *Labour Act* continues to apply to such persons.

Transfer of positions

(5) On the coming into force of this subsection, all of the positions within the health authorities of the employees transferred under subsection 4(1) are transferred to, and become part of the establishment of, the Department.

(6) On the coming into force of this subsection, all of the positions within the health authorities of the employees transferred under subsection 4(3) are transferred to, and become part of the establishment of, the Department. 2005,c.41,s.4. *Idem*

5. The transfer of the employees of the health authorities under this Act is deemed to occur without effecting a break in the service of those employees. 2005,c.41,s.5. No break in service

6. Subject to this Act, all terms and conditions of employment of the employees referred to in section 4, whether set by collective agreement, contract of employment, statute, regulation, policy or otherwise, shall continue in force as they were immediately prior to the coming into force of this Act, until changed in the ordinary course of business, including changes effected through labour relations, or by agreement or arbitration, pursuant to the process provided in sections 11, 12 and 14. 2005,c.41,s.6. Terms of employment continue

7. (1) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at a health authority in which they were represented by the Prince Edward Island Union of Public Sector Employees shall continue to be represented by the Prince Edward Island Union of Public Sector Employees unless that representation is changed pursuant to the process provided in sections 11, 12 and 14. Continued representation by PEI Union of Public Sector Employees

(2) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at a health authority in which they were represented by the Canadian Union of Public Employees (Locals 805, 1051, 1778 and 1779) shall continue to be represented by the Canadian Union of Public Employees (Locals 805, 1051, 1778 and 1779) unless that representation is changed pursuant to the process provided in sections 11, 12 and 14. Continued representation by Canadian Union of Public Employees (Locals 805, 1051, 1778 and 1779)

(3) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at a health authority in which they were represented by the Prince Edward Island Nurses Union shall continue to be represented by the Prince Edward Island Nurses Union unless that representation is changed pursuant to the process provided in sections 11, 12 and 14. Continued representation by Prince Edward Island Nurses Union

(4) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at a health authority in which they were represented by the Medical Society of Prince Edward Island shall continue to be represented by the Medical Society of Prince Edward Island unless that representation is changed pursuant to the process provided in sections 11, 12 and 14. Continued representation by Medical Society of Prince Edward Island

Continued representation by International Union of Operating Engineers (Local 942)

(5) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at a health authority in which they were represented by the International Union of Operating Engineers (Local 942) shall continue to be represented by the International Union of Operating Engineers (Local 942) unless that representation is changed pursuant to the process provided in sections 11, 12 and 14.

Continued representation by Prince Edward Island Union of Public Sector Employees

(6) All employees of the Department who occupy positions that, immediately prior to the coming into force of this section, were positions at the Department in which they were represented by the Prince Edward Island Union of Public Sector Employees shall continue to be represented by the Prince Edward Island Union of Public Sector Employees unless that representation is changed pursuant to the process provided in sections 11, 12 and 14.

Continued representation of positions

(7) For greater certainty, any position referred to in subsection (1) to (6) shall continue to be represented by the union that, immediately before this section comes into force represents the employee who holds that position, unless that representation is changed pursuant to the process provided in sections 11, 12 and 14. 2005,c.41,s.7.

Filling vacant position

8. (1) Vacant positions in the Department shall be filled in accordance with the terms of the collective agreement within the scope of which the position falls.

Civil service competitions

(2) Notwithstanding anything to the contrary in the *Civil Service Act*, any employee of a health authority who is transferred to the Department pursuant to subsection 4(3) may apply for an in-service competition in respect of a vacancy or new position in the classified division of the civil service.

Accumulated service

(3) The service accumulated by all of the employees who are transferred under this Act shall be recognized and credited by the Department. 2005,c.41,s.8.

Termination of employment

9. Nothing in this Part shall prevent the termination of the employment of any employee, whether at the initiative of the Department or of the employee, and any rights and obligations in connection with the termination shall be determined based on the relevant collective agreement, contract of employment, statute, regulation or other source of terms and conditions of employment, as the case may be, and on the law applicable thereto. 2005,c.41,s.9.

Severance pay

10. For greater certainty, nothing in this Act shall be construed as entitling any person to severance pay as the result of being transferred to the Department or to the Civil Service. 2005,c.41,s.10.

11. (1) The Treasury Board shall constitute one or more negotiation committees to conduct bargaining, and enter into agreements, on behalf of the Department. Negotiation committee

(2) The negotiation committee shall enter into negotiations with the unions referred to in section 7 for the purpose of negotiating the terms and conditions of agreements to facilitate the transfer of employees represented by those unions to the Department, under subsection 4(3), including issues arising from, or in any way related to, System of collective bargaining

- (a) the creation of new or altered job classifications within the health system and the Department;
- (b) the restructuring of existing bargaining units;
- (c) jurisdictional issues arising out of the intermingling of employees from separate bargaining units;
- (d) the transfer of employees between bargaining units;
- (e) the exclusion from bargaining units of positions which involve the exercise of managerial functions, or performance of functions of a confidential nature relating to labour relations; and
- (f) generally, any issue arising out of, or incidental to, the process and implementation of this transfer of employees.

(3) No offer having financial implication shall be made by a negotiating committee without the prior approval of the Treasury Board. Approval required

(4) A negotiating committee shall not enter into an agreement unless the proposed terms of the agreement are approved by the Minister and the Treasury Board. Idem

(5) An agreement entered into by the negotiation committee binds the Minister and the Treasury Board, as if each were privy to the agreement. Effect of agreement

(6) An agreement entered into under this section by the negotiation committee and a union is enforceable by the Minister and the union. Idem
2005,c.41,s.11.

12. (1) Any disputes between the negotiation committee and any one or more of the unions referred to in section 7 arising out of, or incidental to the process and implementation of the transfer of employees to the Department under subsection 4(3) shall be referred for mediation, and final and binding arbitration, if necessary, to such mediator-arbitrator as the parties may agree upon. Mediator-arbitrator

(2) Where the Minister responsible for labour is satisfied that the parties referred to in subsection (1) cannot agree on a mediator-arbitrator, the Minister responsible for labour shall Ministerial appointment

- (a) appoint

- (i) the Honourable George W. Adams, Q.C. as the mediator-arbitrator, if he is willing and able to act in that capacity; or
 - (ii) such other person as the Minister considers appropriate to act as the mediator-arbitrator if the Honourable George W. Adams, Q.C. is unable or unwilling to act in that capacity; and
- (b) refer any dispute between the parties to that mediator-arbitrator for mediation, and final and binding arbitration, if necessary.

Award or decision

(3) The mediator-arbitrator may, in respect of a dispute, issue any award, decision, interim order, order, direction or declaration that the mediator-arbitrator considers appropriate, and that award, decision, interim order, order, direction or declaration is final and binding on the parties subject thereto, who shall do or abstain from doing anything thereby required of them.

Failure to comply
enforcement

(4) Where any party subject to an award, decision, interim order, order, direction or declaration issued by the mediator-arbitrator fails to comply with that award, decision, interim order, order, direction or declaration by the date required therein or, if none, within fourteen days of the date it is served on that party, any other party affected by that award, decision, interim order, order, direction or declaration may notify the mediator-arbitrator in writing of the failure to comply, and the mediator-arbitrator shall, if he or she agrees that there has been a failure to comply, file a copy of the decision, interim order, order, direction or declaration with the Registrar of the Supreme Court, and thereupon it may be enforced in the same manner, to the same extent and with the same priorities as a judgment of that court may be enforced.

Arbitration Act -
application

(5) The *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16, does not apply to arbitrations referred to in this section.

Labour Relations
Board

(6) An award, decision, interim order, order, direction or declaration referred to in subsection (3) shall not be questioned, challenged, or reviewed by the Labour Relations Board. 2005,c.41,s.12.

Labour Act, non-
application

13. For greater certainty,

- (a) the following sections of the *Labour Act* and any other sections of the *Labour Act* that are applicable by reason of or in connection with any of the following sections, do not apply to or in respect of the Department or the employees of the Department, with respect to any issue arising out of, or incidental to, the process and implementation of this transfer of employees:
 - (i) sections 12 to 18 inclusive,
 - (ii) sections 20, 38 and 39; and
- (b) the Labour Relations Board has no jurisdiction over matters within the jurisdiction of the mediator-arbitrator acting pursuant to section 12. 2005,c.41,s.13.

- 14.** On and after the transfer of the employees into the Department under subsection 4(3), the mediator-arbitrator may exclude any position in the Department held by such an employee from collective bargaining if the position involves the exercise of managerial functions or the performance of functions of a confidential nature relating to labour relations and such decision of the mediator-arbitrator shall prevail over the terms of any collective agreement. 2005,c.41,s.14. Exclusion
- 15.** The references to the Union in section 43 of the *Civil Service Act* shall not be construed to preclude Civil Service Act
- (a) an agreement entered into by a negotiating committee; or
 - (b) an award, decision, order, direction or declaration of a mediator-arbitrator,
- from transferring any position held by an employee of the Department referred to in subsection 7(6) to a union that is referred to in subsections 7(1) to (5). 2005,c.41,s.15.
- 16.** Notwithstanding the transfer of the employees of a health authority to the Department under this Act, Health authorities - liability for salaries and staffing after transfer
- (a) the health authority continues to be liable for the salaries and wages, provisions and benefits of its former employees that are
 - (i) outstanding on the date of the transfer, or
 - (ii) earned as employees of the Department after the transfer; and
 - (b) the Minister shall provide the health authority with such employees of the Department as the Minister considers appropriate to carry out the functions of the health authority. 2005,c.41,s.16.
- 17.** (1) In this section, Definitions
- (a) “affected employee” means a person who affected employee
 - (i) is transferred from a health authority
 - (A) to the Department and the civil service under subsection 4(1), or
 - (B) to the Department under subsection 4(3), and
 - (ii) is given a notice of layoff from his or her employer on or before July 5, 2005;
 - (b) “confirmed employee” means a person who confirmed employee
 - (i) is transferred from a health authority to the Department and the civil service under subsection 4(1), and
 - (ii) is given a notice of layoff from his or her employer on or before July 5, 2005 that is rescinded by that employer before January 2, 2006;
 - (c) “employer” means a participating employer under the *Civil Service Superannuation Act*; employer

- non-affected employee (d) “non-affected employee” means a person who is transferred from a health authority to the Department and the civil service under subsection 4(1) and who has not been given a notice of layoff from his or her employer as of July 5, 2005.
- Civil Service Superannuation Act* -application (2) A person who
 (a) is transferred from a health authority to the Department and the civil service under subsection 4(1); or
 (b) is transferred from a health authority to the Department under subsection 4(3) and, on or after the transfer, obtains
 (i) a permanent position in the civil service of a type described in clause 43(2)(g) of the *Civil Service Act*, or
 (ii) a permanent position in the civil service that is subject to the Collective Agreement between the Government of Prince Edward Island and the Workers Compensation Board of Prince Edward Island and the Island Regulatory and Appeals Commission and the Prince Edward Island Union of Public Sector Employees, entered into on March 14, 2005,
 shall be subject to the *Civil Service Superannuation Act*, and shall participate in the pension plan established under that Act, as of the date the employee is deemed under subsection (3) or (4) to have obtained the permanent position in the civil service.
- Date permanent position in civil service obtained (3) A person referred to in subsection (2) who obtains a permanent position in the Department is deemed to have obtained a permanent position in the civil service on
 (a) October 9, 2005, if the person
 (i) is a non-affected employee, or
 (ii) is a confirmed employee whose lay off notice was rescinded prior to October 9, 2005; or
 (b) the first day of the first pay period of the employee immediately following the date of the letter of offer to the employee from his or her employer or the Public Service Commission, if the employee
 (i) is an affected employee and is successful in obtaining a permanent position through a staffing competition after the transfer, or
 (ii) is a confirmed employee whose lay off notice is rescinded on or after October 9, 2005.
- Idem* (4) A person referred to in subsection (2) who obtains a permanent position in the civil service, but does not obtain such a position with the Department, is deemed to have obtained a permanent position in the civil service on the first day that the employee commences working in the permanent position. 2005,c.8,s.1.

17.1 A person who

- (a) is transferred from a health authority to the Department and the civil service under 4(1);
- (b) is given a notice of layoff from the employer on or before July 5, 2005; and
- (c) as of January 15, 2006,
 - (i) has not obtained a permanent position in the civil service, and
 - (ii) is on a secondment, temporary assignment or similar employment arrangement that has been approved,
 - (A) on or after the transfer of the person, by his or her employer, or
 - (B) before the transfer, by the health authority,

Civil Service Superannuation Act
- application

shall, as of January 15, 2006, be subject to the *Civil Service Superannuation Act* and shall participate in the pension plan established under that Act. 2005,c.8,s.1.

17.2 (1) Subject to section 17, a person who

- (a) is transferred from a health authority to the Department under subsection 4(3); or
- (b) obtains a vacant position in the Department that is represented by a union referred to in subsections 7(1), (2), (3) and (5),

Civil Service Superannuation Act
- non-application

is not subject to the *Civil Service Superannuation Act* and may not participate in the pension plan established under that Act.

(2) Subsection (1) does not apply to a person who is, immediately before this section comes into force, a participating member of the pension plan established under the *Civil Service Superannuation Act*. 2005,c.41,s.17; 2005,c.8,s.1.

Exception

18. 2005,c.41,s.18.

Consequential amendment

19. The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary in respect of transitional matters arising under this Act. 2005,c.41,s.19.

Regulations

20. Where the control or supervision of any positions or employees transferred to the Department under this Act is transferred by or under an enactment from the Minister and the Department to any other Minister and to any other department of the public service, a reference in this Act to the Minister and to the Department shall be read and construed as references to the Minister and to the department to which the control or supervision of the positions or employees is so transferred. 2005,c.41,s.20.

Department reorganizations