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Guidelines for Essential Services Designations

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Guidelines for Essential Services Designations

1. Introduction

These guidelines outline the process for identifying and designating positions in a bargaining unit as essential within the meaning of the amended [Public Service Labour Relations Act](#) (PSLRA), which received royal assent on December 12, 2013.

It should be noted that, while certain aspects of the essential services designation process are unchanged from the previous Act (e.g. a designated position should always be linked to the safety or security of the public), other parts have been significantly revised. The reader is therefore advised to read this document carefully.

2. Legislative base

Bill C-4, the [Economic Action Plan 2013 Act, No. 2](#), repealed sections 119 to 134 of the PSLRA and replaced them with new sections 119 to 125. These changes were designed to streamline and modernize the essential service designation process, further enhancing the employer's ability to provide essential services to the public during a work stoppage.

3. Application

These guidelines apply to departments and agencies listed as part of the core public administration (CPA) in Schedules I and IV of the [Financial Administration Act](#) and for which the Treasury Board is identified as the employer.

4. Terminology

The definitions of various terms (e.g., bargaining agent, bargaining unit, collective agreement, conciliation, employee, employer, strike) used throughout these guidelines are those found in the PSLRA.

4.1 What is an essential service?

Under the PSLRA, an "essential service" is defined as "any service, facility or activity of the Government of Canada [that] is or will be necessary for the safety or security of the public or a segment of the public."

Examples of government services or activities that may be considered essential include, but are not limited to:

- border safety/security
- correctional services
- food inspection activities
- accident safety investigations
- income and social security
- marine safety
- national security
- law enforcement
- search and rescue

Although the notion of "safety or security of the public" is not defined in the Act, some examples may be found in jurisprudence. (See [Annex A](#) for examples).

5. Designation Process

Key among the changes to the essential services provisions of the PSLRA are the following:

- the employer now has the exclusive right to determine whether any service, facility or activity of the Government of Canada is essential because it is or will be necessary for the safety or security of the public or a segment of the public;
- the employer now has the exclusive right to designate positions in a bargaining unit that include duties that, in whole or in part, are or will be necessary for the employer to provide essential services; and
- the employer now may exercise the right to designate "at any time."

Although the employer has the exclusive right to designate positions, in accordance with subsection 122.(1), after giving notice to the bargaining agent, the employer must consult on the positions it has designated. Following this consultation, the employer must notify the bargaining agent of the positions in the bargaining unit that it has designated.

Under the Act the employer also has the right to designate positions that include duties that "in whole or in part" are or will be necessary for the provision of an essential service, and therefore any employee whose work includes an essential service-related duty can be designated, and any designated employee must report for duty in the event of a strike. Furthermore, when designating a position, the employer must ensure the position is encumbered.

If a designated position becomes vacant, the department may identify a position of the same type as a replacement position. If the

department does so, the TBS must provide the bargaining agent with a notice of replacement.

5.1 Review of a Designation Proposal

Responsibility for determining what positions within their operations include duties that are necessary for the employer to provide essential services rests with departmental management, as does responsibility for identifying and recommending proposed designations. In order to ensure a consistent approach to the designation of essential service positions across the core public administration, the Compensation and Labour Relations Sector of the Treasury Board Secretariat (TBS) will work with departments to review designations to resolve any areas of concern. The final decision regarding designations rests with the employer.

5.2 Consultation

Consultation with bargaining agents on the positions that have been designated is a legislative requirement and will be conducted by the TBS. The TBS will use the information in the online Essential Services System (ESS) to provide lists of designations with the notification to the relevant bargaining agent.

The list will include the total number of designations in the bargaining unit, the rationale and the position numbers, and will be provided by department and work location. The TBS will also inform the Public Service Labour Relations Board (PSLRB) of the date on which the bargaining agent was notified.

Following notification of the bargaining agent, the TBS and the bargaining agent will have 60 days to complete their consultations. Within 30 days following the end of this 60-day consultation period, the employer will notify the bargaining agent of all the designated positions and percentage of designated positions in the bargaining unit.

5.3 Notification of Employees

Departments are responsible for notifying each employee who occupies a position designated essential, and for entering the relevant information into the ESS.

Section 124(1) of the PSLRA indicates that notice must be given to employees as soon as feasible after the Employer has made its designations known to the bargaining agent and the PSLRB. TBS has interpreted this to mean that departments must provide employees with the letters of designation after the employer has completed its consultation, determined which are the designated positions, and notified the bargaining agent in writing that the employer has designated positions in the bargaining unit under section 122.(2).

The Notice to Employee will inform each employee occupying a designated position that he or she is prohibited from participating in a strike. Departments should bear in mind that, when staffing a designated position, the employee must be provided with the designation notice at the time of occupying such a position. A Notice to Employee template can be found at [Annex B](#). This letter may be sent by email.

5.4 Revocation of Designations

A designation remains in effect until revoked by the employer.

Employees must be informed in writing that the position they occupy is no longer necessary for the employer to provide essential services, and consequently that the designation has been revoked. The change in status must be recorded in the ESS. A Revocation Letter template can be found at [Annex C](#). This letter may be sent by email.

5.5 Departmental Responsibilities

Departmental Human Resources (i.e., Labour Relations) officials, with advice and guidance from the TBS, are responsible for:

- providing departmental managers with the advice, guidance and support (e.g., assisting in the preparation of rationales or other documentation) required to ensure the correct and timely completion of the Essential Services Designation Form; A template can be found at [Annex D](#);
- ensuring that all designations are identified in the Essential Services Designation Form;
- ensuring that employees who occupy positions designated essential are provided with their designation notices as soon as feasible, in accordance with subsection 124.(1);
- ensuring that employees occupying positions designated as essential are identified in the departmental HR system and the ESS;
- ensuring that employees who occupy positions that are no longer designated essential receive letters of revocation;
- ensuring that the above-noted systems and databases are kept up-to-date should it be necessary to produce a revised list in the event of a strike;
- ensuring that designations are submitted to the TBS within the timelines and in the format determined by the TBS;
- ensuring that a confirmation e-mail is provided to the TBS once all "Notification to Employee" notices to a bargaining unit are issued.

Departmental managers, with advice and guidance from departmental Human Resources (i.e., Labour Relations) officials, are responsible for:

- reviewing the positions within their organisations and identifying the positions that include duties that are necessary

- for the employer to provide essential services;
- providing rationales in support of designations (the Essential Services Designation Form at [Annex D](#) must be used for this purpose);
- producing any additional documentation if required by the TBS (e.g., organizational charts and work descriptions); and
- after a position has been designated, notifying the incumbent of the related implications (the Notice to Employee template at [Annex B](#) must be used for this purpose). The notice may be sent by email. It is managers' responsibility to ensure delivery of the email.

5.6 Treasury Board Secretariat Responsibilities

The TBS is responsible for:

- notifying a bargaining agent whether the employer has, or has not, designated positions in the bargaining unit, and, if so, providing the bargaining agent with a list of the positions it has designated;
- notifying the PSLRB of the date on which the bargaining agent was notified;
- immediately following notification of the bargaining agent, consulting with the bargaining agent on the designations for a period of up to 60 days;
- providing advice and guidance to departmental officials, when requested;
- maintaining the ESS;
- once the consultations have finished, within 30 days, notifying bargaining agents of the positions that have been designated, and informing departmental heads of Human Resources;
- monitoring departmental compliance with the Act;
- reviewing and resolving any inconsistencies with designations; and
- providing guidelines, templates, letters and other tools as required.

6. References

- [Public Service Modernization Act](#)
- [Public Service Labour Relations Act](#)
- [Financial Administration Act](#)
- [Economic Action Plan 2013 Act, No. 2](#)

7. Enquiries

Enquiries should be directed to departmental human resources officers who, in turn, may direct enquiries to:

Labour Relations Programs,
Office of the Chief Human Resources Officer,
Treasury Board of Canada Secretariat
400 Cooper St.
Ottawa, Ontario
K2P 2H8

E-mail: Essential_Services_Essentiels@TBS-SCT.gc.ca

Members of the public who have questions about these guidelines should contact [TBS Public Enquiries](#) for assistance.

Annex A – Jurisprudence

The following principles are derived from past PSSRB and PSLRB case law on designations and the former essential services agreements (ESAs). Because decisions of the Employer are subject to judicial review, Departmental managers and human resource officials should keep these principles in mind when designating essential services positions.

1. "Inconvenience to the public" is not a valid consideration for determining essential services.
2. The mental, psychological or emotional state of individuals is not covered by the idea of safety or security of the public.
3. Management may designate where there is merely the *possibility* that human life or public safety would be harmed, but it must consider the employee's regular duties only and not extraordinary or hypothetical situations. "Safety or security" can also relate to future situations.
4. Safety/security-related duties do not encompass duties that would protect the employer or the public from economic hardship.
5. Employees who maintain equipment/facilities that may contribute to safety do perform duties that are necessary for the safety or security of the public.
6. The term "public" is to be given a broad meaning. It includes employees and inmates.

Annex B – Notice to Employee

Notice to Employee

Subject: Essential Services Designation

Position Number:
My GCHR Position Number, if available: New
Position Title:
Group and Level:
Branch/Section:
Work Location:

Pursuant to subsection 124.(1) of the *Public Service Labour Relations Act* (PSLRA), this notice is to inform you that the position you occupy has been identified as a position that provides essential services.

In the event of a strike, you will be required to report for duty at your normal time and place of work, unless directed otherwise by your manager. You will be expected to work your entire full day's work or shift, as scheduled, unless notified otherwise by your manager.

Subsection 125.(1) of the PSLRA stipulates that, unless the parties agree otherwise, the terms and conditions of employment applicable to employees occupying positions designated essential remain unchanged until such time as a new collective agreement is entered into.

As an employee occupying an essential services position, you are prohibited by section 196 of the PSLRA from participating in a strike. Section 201 of the PSLRA further provides that, should you contravene section 196, you could be found guilty of an offence and be liable on summary conviction to a fine of up to \$1,000.

At a later date, you will be provided with instructions regarding your access to the workplace during a strike. Failure to observe these instructions could result in loss of pay and/or disciplinary action.

You are advised to print a copy of this notice and keep it in a safe place. In the event of a strike, it may be required when you report for duty.

This notice is valid as long as you occupy this position or until you are notified otherwise, whichever occurs first.

Should you have any questions or require clarification regarding any of the preceding, please do not hesitate to contact me at [telephone number].

Sincerely,

Management Representative

cc: Employee personnel file
Branch file
Corporate Labour Relations

If a hard copy letter is provided in lieu of electronic notification, an acknowledgment of receipt is recommended.

I acknowledge receipt of this letter and that I have been given an opportunity to discuss the content and ask any questions I may have. I understand that I can request additional clarification at any time.

Employee Signature:

Date:

Annex C – Revocation Letter

Subject: Essential Services Designation

Position Number:
Position Title:
Group and Level:
Branch/Section:
Work Location:

Pursuant to subsection 124.(2) of the *Public Service Labour Relations Act* (PSLRA), this notice is to inform you that the position you occupy is no longer one that is considered necessary for the employer to provide an essential service. This change takes effect immediately.

As a result of this change in status, the Notice to Employee letter that you received on [date] is no longer valid, and you are no longer prohibited from participating in a legal strike.

Your bargaining agent, [name of BA], will also be notified of the change in status of your position.

Should you have any questions or require clarifications in connection with this matter, please do not hesitate to contact me at [telephone number].

Management Representative

cc: Employee personnel file
Branch file
Corporate Labour Relations

Annex D – Essential Services Designation Form

Department:

Position Information

Position Number:

Position Title (English and French):

Group and Level:

Branch, directorate, division, section:

Work Location:

Province:

Date of Designation:

Departmental Contact

Name:

Title:

Telephone Number:

E-mail:

Rationale

Important: The services or activities of a position designated essential must be clearly described. Also provide a precise explanation of the impact on the safety or security of the public if those services were not available during a strike.