

# Essential Services and Labour Disputes: Key Considerations for Manitoba Municipalities

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## New Labour Relations Changes Affecting Municipal Employers



In November 2024, significant changes came into effect in ***The Labour Relations Act*** (the “Act”) that **apply to almost every unionized workplace in Manitoba**, including municipalities.

A new prohibition on the use of **replacement workers** in the event of a legal strike or lockout was a first component of these changes. These new provisions create restrictions on the use of a person who is hired or engaged after the date that notice to commence collective bargaining is given to perform work normally performed by the bargaining unit employees on strike or locked out. The Act further describes additional employees or contracted persons that would fall within this concept of replacement workers.

A second and related component was a new regime of **rules and requirements related to the provision of essential services** during a strike or lockout.

## Understanding Essential Services Requirements

The Act requires that, during a strike or lockout, the employer, bargaining agent and employees continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent:

- a threat to the health, safety or welfare of a resident in Manitoba.
- disruption to the administration of justice.
- a threat of serious environmental damage.

These new provisions require all employers and bargaining agents to first determine whether there are essential services provided by bargaining unit employees. If no essential services exist, a document must be filed with the **Manitoba Labour Board** to confirm that determination. If some essential services exist, as a first step the parties should try to reach

a common understanding of the services that need to be provided. As a next step, the essential services agreement must describe how the essential services will continue in the event of a strike or lockout.

## Why These Changes Matter for Municipalities

Many **municipalities provide essential services** of some kind for their residents, and as a result, these new requirements will be applicable to any unionized employee groups that perform such services. One of the few exceptions to these requirements are employee groups that do not have the legal ability to strike, such as police officers or firefighters.

As these new provisions have been in effect for approximately 18 months, there are some observations that can be made from the experiences to date.

## Early Lessons from the First 18 Months

### *Consider Alternate Timing*

The new provisions are designed so that the determination of whether essential services exist is made **180 days before the expiry of a collective bargaining agreement**. If essential services exist, the parties are to file an essential services agreement with the Manitoba Labour Board no later than **90 days prior to the expiry of the agreement**. These provisions contemplate that this essential services discussion is to be completed immediately prior to the commencement of collective bargaining negotiations.

Our firm's observation is that in many situations, the parties do not complete (or sometimes even initiate) the essential services discussion prior to collective bargaining negotiations. In many instances the parties start the essential services discussion with the commencement of collective bargaining negotiations, and parallel discussions occur. If the parties are able to successfully reach agreement for a new collective bargaining agreement, the essential services discussion falls off without completion of an essential services agreement.

However, if some essential services exist within the bargaining unit and collective bargaining negotiations become difficult and reach an impasse, the parties will **not be in a legal strike or lockout position until the essential services agreement has been completed**. Conducting this discussion amid the frustrations of the stalled negotiations is not easy and may result in similar difficulties in attempting to address the necessary details of an essential services agreement that addresses what services must be provided, by whom and how.

Although the new provisions have a process for the Manitoba Labour Board to decide the terms of an essential services agreement if required, the timelines and procedures are

onerous. As of the date of this article, not one essential services agreement has been determined by the Manitoba Labour Board through that procedure, evidence that parties have to date decided to use that process as a last resort.

An alternative timeline to consider is to engage in the discussion regarding essential services during the term of the collective bargaining agreement, and in any case long before its expiry. This allows the discussion to occur separate from the dynamics of collective bargaining negotiations and avoids the scenario of having to complete an essential services agreement once the labour relations temperature has risen in the face of an impasse and potential labour dispute.

Practically, even if this earlier timeline is used and a final essential services agreement is not concluded, the work that the parties put into the discussion should provide a foundation for that discussion to continue in the normal timeframe upon the expiry of the collective agreement. The parties won't have to restart the essential services discussion from scratch.

The Manitoba Labour Board encourages parties to engage it to assist with the essential services discussion. In contrast to the formal procedure for the determination of an essential services agreement, mediation with the Manitoba Labour Board assists the parties with the discussion on their own timeline. The board's representatives in this context are there to facilitate the **essential services discussion** between the parties to help them negotiate their own agreement rather than to impose terms of an agreement on them.

## ***Plan Ahead and Pay Attention to Details***

An essential services agreement should describe in sufficient detail what the essential services are and how they will be performed during a strike or lockout. Keep in mind that the concept is not that services are performed at normal levels but rather that they will be performed at **minimal levels required to maintain the essential services** described in the agreement.

Snow clearing is a commonly discussed example of such services.

If **snow clearing** on roadways and sidewalks is work normally performed by unionized employees, the parties will need to consider if such services are essential, and if so, the extent to which such services will be provided during a strike or lockout. For example, will a smaller group of employees be on standby for such services, and, if so, at what threshold does the snow clearing become essential?

Snowfall accumulation is one possible objective measure to trigger such services; however, keep in mind that on windy days high snow drifts can accumulate without any snowfall occurring at all. Consider how to best describe the conditions that will require services to be provided and how those conditions can be objectively measured if possible (e.g. drifts or

accumulation of a certain height) to avoid disputes.

Similar considerations might exist with **overland flooding**. In many municipalities, there is a small window of time in the spring for flood mitigation work to be conducted. If the work is not completed in time, it may not be possible to get equipment close enough to the problem areas to address the subsequent flooding that results. If such work is considered to be essential service work, an essential services agreement should address this concept in sufficient detail to describe when such flood mitigation work would be required and how it would be performed.

## ***Think Long Term, Not Short Term***

These are just two examples of the types of services provided by municipalities; there are other examples that can arise, particularly in public works departments and utilities departments. For each type of service that is provided, a municipality should consider the impact of a strike or lockout on the provision of such service. **Think about all four seasons** and the types of scenarios that can arise. If you are discussing essential services in the middle of summer, don't forget about the extreme winter conditions and their impact on services provided to residents. Similarly, consider how to address those few weeks in spring where overland flooding can be a considerable issue to manage. Think about not just a one- or two-day suspension of such services but also the possibility of the impact of a suspension that could last weeks or months.

## **Conclusion: Prepare and Invest Time for the Discussion**

The key is to invest sufficient time and effort toward these important issues to ensure that essential services continue to be provided to residents in the event of a labour dispute.

**Avoid putting this discussion off until the last minute** and consider whether an alternate timing would be beneficial for both the municipality and the union involved.

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