



We Own It

Guide to Essential and Emergency Services

April 2017

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1. What are Essential and Emergency Services (EES)?

The **Crown Employees Collective Bargaining Act** (CECBA) gives OPSEU members in the Ontario Public Service (OPS) the legal right to strike. It also requires us to provide essential and emergency services (EES) during a strike or lockout.

CECBA defines essential and emergency services in Section 30 as services that are **necessary to enable the employer to prevent:**

- danger to life, health or safety;
- destruction or serious deterioration of machinery, equipment or premises;
- serious environmental damage; and
- disruption of the administration of the courts or legislative drafting.

That's the criteria used in negotiating an essential and emergency service.

2. What are Essential and Emergency Services Agreements (EESAs)?

CECBA specifies that the EESAs must identify:

- the essential and emergency services;
- the number of employees required to perform the essential and emergency services;
- the employees, usually by position and/or classification, who will be required to work during a strike or lockout **to the extent necessary to enable the employer to provide essential and emergency services.**

Your EESA (if applicable) will also identify:

- the Ministry and location;
- the number of employees who normally provide that service – “normal complement” (NC);
- the essential and emergency job functions; and
- the triggers that set an emergency service in place.

The agreements may identify key conditions. It is not business as usual in the workplace, and the health and safety of employees must be maintained.

If an agreement was negotiated in 2014 you will receive it, otherwise you are starting with a blank template.

3. Why are we doing the EES review?

OPSEU members in the Ontario Public Service (OPS) will bargain a new collective agreement later this year.

The Crown Employees Collective Bargaining Act requires OPSEU and the employer to negotiate agreements to provide EES in the event of a strike or lockout. We have no choice in this matter. It's the law.

At its October Divisional, Unified Members made a motion to amend the bargaining procedures to state that EESAs be completed as soon as reasonably possible in advance of issues bargaining. The Executive Board passed these amendments at their March 8-9, 2017 meeting.

If there was a negotiated worksite agreement for your local in 2014, you will be provided with that EESA. We'd like you to review them and identify any **significant change** that needs to be renegotiated to reflect the current situation. We'd also like you to identify any changes you think the employer may want to change, that may not be in our best interests.

4. What else do I need to know about EES?

A Supreme Court decision states that essential or emergency services agreements must be negotiated so that they allow for the Union to have a meaningful strike.

A ruling by the Ontario Labour Relations Board (OLRB) during the 1998-99 negotiations outlined the following four principles:

- The right to strike can only be limited **to the extent necessary to enable the employer to provide essential services**. A strike or lockout is **not** business as usual.
- Members who must perform essential services are required to do the **essential parts** of their job, not their whole job.
- The union is entitled to **unscheduled worksite inspections** of up to 30 minutes to ensure the EESA is being followed. There is no limit on the number of worksite visits. [Note: The parties later negotiated a 45-minute protocol.]
- Essential and emergency workers retain **the right to refuse unsafe work** as laid out in the **Occupational Health and Safety Act**.

We have learned other valuable lessons from previous rounds of negotiations, like:

- The EESAs have to identify the essential and emergency **functions** of the job. The Ontario Labour Relations Board (OLRB) ruled that **if an EESA does not spell out the essential job functions, the whole job is deemed to be essential**. Any exclusions to the whole job must be identified in the EESA.
- The OLRB makes its rulings based on the EESA. The union won't win arguments about what's essential and what's not, if the information is not in the EESA. Therefore, **EESAs must be detailed and specific about the job functions that are essential**.
- Once the agreements are signed off, the employer cannot add duties. The employer can't make an essential worker do work that's normally done by another position.
- The more information your bargaining teams have about your workplace, the better. The employer has been known to fabricate stories – at the bargaining table or the Labour Board – about the work of OPSEU members.

5. Can the number of OPSEU essential workers be reduced if managers will be doing EES work?

Yes, they can, but ONLY IF these “management offsets” are bargained into the EESA. Otherwise, CECBA applies. CECBA says that the number of bargaining unit members necessary to provide the essential services shall be determined **without regard to the availability of other persons** to provide the services. Management offsets must be bargained.

6. What does ‘significant change’ mean?

There may have been some small changes in your worksite since an EESA was negotiated in 2014, but not enough to make a big difference to your EESA. However, there may be big changes that would warrant a change to the EESA to more accurately reflect the current situation. We have seen a lot of restructuring, downsizing and privatization which is categorized as significant change.

Here are some examples of things to consider when reviewing your EESAs when identifying '**significant change**'.

- Do we have additional members in our Local, due to a Ministry re-org, or has one of our services had a big increase in the normal complement?
- Have we lost members in the Local due to a Ministry re-org or divestment or closure?
- Has our Local merged with or separated from another Local?
- Has there been a change in legislation that impacts the essential or emergency part of our jobs?
- Has there been a change in classification status, from fixed term to regular? Has the position changed from full-time to seasonal?

7. What are the steps to the review if there was a 2014 EESA?

You have received in this package:

- Copies of the worksite-specific EESA's that apply to your local
- Copies of the review form

There are four steps to complete the review:

Step 1. Please review the 2014 EESAs. Have you received the appropriate agreements for the worksites in your local? Are you missing any agreements? Have agreements been added to your local? If you have questions about the agreements, please contact your Staff Representative.

Step 2. Contact a steward or active member(s) in the identified worksites and in the appropriate services in your local to help you complete the review. Do this at lunch, on break or after work.

Step 3. Answer the questions on the review for each essential or emergency job. (Keep reference notes for your records).

Step 4. Send your review form to your regional office by **May 19, 2017**. If you have any questions, contact your Staff Representative for help.

8. What are the steps to identify EES if there is no 2014 EESA?

You have received in this package:

- Copies of the blank EESA template
- A list of regional office email addresses and fax numbers

There are four steps to complete the review:

- Step 1.** Identify all the worksites that you believe have essential or emergency services.
- Step 2.** Contact a steward or active member(s) in the identified worksites and in the appropriate services in your local to help you complete the template. Do this at lunch, on break or after work.
- Step 3.** Answer the questions on the template for each essential or emergency service. (Keep reference notes for your records).
- Step 4.** Send your completed form to your regional office by **May 19, 2017**. If you have any questions, contact your Staff Representative for help.

9. What should you expect from the employer?

The objective of the employer is to keep every workplace running as usual in the event of a strike or lockout. The employer goes into EES bargaining trying to achieve this objective. Don't be too surprised if managers start asking questions when you start canvassing members. They may try to harass you. They may try to interfere with your answers.

Don't let them. Article 3 of the collective agreement is clear: management shall not discriminate against you or harass you because of union activity. As a member of the Local Executive Committee, (this includes stewards), it is your right to communicate with your members about union matters. You cannot disrupt the employer's operation while you do this. Contact members about the review over lunch, on break or after work.

OPSEU Regional Offices – Contact Information

Regional Office	Email Address	Fax #
London	mmacdonald@opseu.org	(519) 649-2786
Windsor	lbaker@opseu.org	(519) 977-7553
Guelph	gmerritt@opseu.org	(519) 837-9187
Hamilton	Ssostar@opseu.org	(905) 525-2377
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