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Canada Emergency Wage Subsidy Enacted

April 13, 2020

During an emergency sitting of Parliament on Saturday night, the federal government's wage subsidy legislation (entitled *A Second Act Respecting Certain Measures in Response to COVID-19*) was passed by both the House of Commons and the Senate and received Royal Assent. The new Canada Emergency Wage Subsidy (CEWS) provides a 75% wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020.

Eligible Employers

Eligible employers can include the following entities:

- individuals
- taxable corporations
- registered charities, other than public institutions such as school boards, colleges or hospitals
- partnerships, all members of which are eligible employers

All of the above-noted entities must demonstrate that they have experienced a qualifying drop in revenue during the eligible period in accordance with the chart below. Notably, the lost revenue threshold for eligibility for the CEWS in March of 2020 has been lowered from 30% to 15% to reflect the fact that the most significant consequences of the pandemic began in mid-March. Employers will be required to re-apply for the CEWS each month.

The legislation provides that an employer's revenue will be defined as its revenue in Canada earned from arm's-length sources. Employers are allowed to calculate their revenues under the accrual method or the cash method, but not a combination of both. Employers must select an accounting method when first applying for the CEWS and then continue to use that same method for the entire duration of the program. We therefore recommend consulting with your company's financial advisors before preparing and submitting your application for the CEWS to ensure that you select the most appropriate accounting method to be used for your CEWS application.

Eligible Periods

Claiming Period	Required Reduction in Revenue	Reference Period for Eligibility
Period 1 March 15 - April 11	15%	March 2020 over: <ul style="list-style-type: none">◦ March 2019 or◦ Average of January and February 2020
Period 2 April 12 - May 9	30%	Eligible for Period 1 OR April 2020 over: <ul style="list-style-type: none">◦ April 2019 or◦ Average of January and February 2020
Period 3 May 10 - June 6	30%	Eligible for Period 2 OR May 2020 over: <ul style="list-style-type: none">◦ May 2019 or◦ Average of January and February 2020

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Eligible Employees

The government had previously announced that an employer would not be eligible to claim the CEWS for remuneration paid to an employee that falls within any four week period in which the employee is eligible to receive the Canadian Emergency Response Benefit (the CERB). However, that rule has now been adjusted somewhat to define an eligible employee as an individual who is employed in Canada other than those who have been without remuneration for 14 or more consecutive days in the eligibility period, i.e., from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6. The government has announced that it is considering implementing a program to avoid duplication of benefits under the CERB and CEWS, which could involve requiring individuals rehired by their employers during a CERB eligibility period to cancel their CERB claim and repay the benefits. However, we do not have any further details on that at this time.

Calculating the Subsidy

The subsidy amount for any particular employee for the period between March 15 and June 6, 2020 is the greater of:

- 75% of the amount of remuneration paid, up to a maximum benefit of \$847 per week; and
- the amount of remuneration paid, up to a maximum benefit of \$847 per week or 75% of the employee's pre-crisis weekly remuneration, whichever is less.

Pre-crisis remuneration is calculated on the basis of the employee's average weekly earnings paid between January 1 and March 15 inclusively, excluding any seven-day periods during which the employee received no pay. Employers are also eligible to receive the subsidy for new employees and, importantly, there is no overall limit on the subsidy amount that an eligible employer may claim. It would appear that this is intended to incentivize employers to not only retain existing employees using the CEWS but also to use it to continue to hire new employees wherever possible.

As previously announced, the federal government has indicated that employers are expected to make "best efforts" to top-up employees' salaries to bring them to pre-crisis levels. However, the legislation does not contemplate any reduction in CEWS subsidy payments or penalties in the event that participating employers do not meet this standard, although there are penalties for employers who provide false information regarding their eligibility and receive overpayments under the CEWS. Such penalties include potentially significant fines and even imprisonment.

New Relief for Employers

The legislation also introduces payroll tax relief for employers who have placed employees on paid leave. The CEWS now includes a refund for certain employer-paid contributions to Employment Insurance (EI), the Canada Pension Plan, the Quebec Pension Plan and the Quebec Parental Insurance Plan. This refund covers 100% of employer-paid contributions for eligible employees for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees. An employee will be considered to be on leave with pay throughout a week if that employee is paid by the employer but does not perform any work for the employer in that week. This refund will not be available in respect of eligible employees that are on leave with pay for only a portion of a week.

This refund is not subject to the weekly maximum benefit per employee of \$847 that an eligible employer may claim in respect of the CEWS, meaning that the refund also applies to contributions that would normally be made for earnings above the weekly maximum benefit. There is no overall limit on the refund amount that an eligible employer may claim.

It should be noted that this is a refund and not a moratorium on collection and remittance. Employers are still required to collect and remit employer and employee contributions to each program as usual. Eligible employers can then apply for a refund at the same time that they apply for the CEWS.

Interaction with Other Relief Programs

On March 25, 2020, the *COVID-19 Emergency Response Act*, which included the implementation of a temporary 10% subsidy, received Royal Assent. For employers that are eligible for both the CEWS and the 10% wage subsidy for a period, any benefit from the 10% wage subsidy for remuneration paid in a specific period generally reduces the amount available to be claimed under the

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CEWS in that same period.

For employers and employees that are participating in a Work-Sharing program, EI benefits received by employees through the Work-Sharing program reduce the benefit that their employer is entitled to receive under the CEWS.

Applications

Eligible employers will be able to apply for the CEWS through the Canada Revenue Agency's *My Business Account* portal. Employers will need to keep records demonstrating their reduction in arm's-length revenues and remuneration paid to employees. The federal government has advised that more details about the application process will be made available shortly and we will continue to provide updates as such information becomes available. As of April 12, 2020, the Finance Minister advised that he expects the subsidy payments to begin within "two to five weeks."

[Additional resources related to the impact of the COVID-19 pandemic can be found here](#)

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.