

## Federal Government Extends and Redesigns the Canada Emergency Wage Subsidy

August 4, 2020

The Government of Canada has passed new legislation to not only extend but to redesign the Canada Emergency Wage Subsidy (CEWS). Bill C-20, *An Act respecting further COVID-19 measures*, received first reading on July 20, 2020 and Royal Assent on July 27, 2020. The redesigned CEWS program will be available to a broader group of employers and has been extended until December 19, 2020, but with program details only provided until November 21, 2020. The legislative changes discussed below are deemed to have come into force on April 11, 2020.

The CEWS was originally introduced on April 11, 2020 and provided a 75% wage subsidy to eligible employers for up to 12 weeks, beginning on March 15, 2020. The program was subsequently extended by regulation until August 29, 2020. Further details about the original CEWS program can be [found here](#).

With the enactment of Bill C-20, however, the program has been significantly modified, including, most importantly, as it relates to determinations of eligibility and the calculation of subsidy entitlements. What follows is an overview of the key changes.

### Extension of CEWS

The CEWS program will be extended until December 19, 2020. The CEWS claim periods, including those provided for under the original CEWS program are set out below:

Period 1	March 15 - April 11
Period 2	April 12 - May 9
Period 3	May 10 - June 6
Period 4	June 7 - July 4
Period 5	July 5 - August 1
Period 6	August 2 - August 29
Period 7	August 30 - September 26
Period 8	September 27 - October 24
Period 9	October 25 - November 21
Period 10	November 22 - December 19

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## Overview of Subsidy

For claim periods beginning July 5, 2020, the CEWS in respect of active employees (i.e., those not on paid leave) will consist of two parts:

- A **base subsidy** available to eligible employers that have experienced any decline in monthly revenues, which will apply on a sliding scale depending on the employer's revenue decline (the Base Subsidy); and
- A **top-up subsidy** of up to 25% available to eligible employers that have been most adversely affected by COVID-19 who have experienced a three-month average revenue decline of more than 50% (the Top-up Subsidy).

For claim periods 5-9, an eligible employer's combined CEWS rate will be equal to the base subsidy rate plus the top-up rate.

## Base Subsidy

The new CEWS legislation has eliminated the 30% revenue decline threshold for Period 5 and subsequent claim periods. Instead, the Base Subsidy will apply on a sliding scale, depending on the employer's revenue decline. The Base Subsidy will be applied at a specified rate on remuneration of up to \$1,129 per week, with the specified rate being determined based on the percentage decline in an eligible employer's monthly revenues.

The maximum Base Subsidy rate will apply where an employer experiences a revenue decline of 50% or more. The maximum Base Subsidy rate will be gradually reduced from 60% in Periods 5 and 6 to 20% in Period 9.

The Base Subsidy will apply as follows:

	Period 5	Period 6	Period 7	Period 8	Period 9
<b>Base Subsidy Rate (by Revenue Decline)</b>					
50% and over	60%	60%	50%	40%	20%
0% to 49%	1.2 x revenue decline	1.2 x revenue decline	1.0 x revenue decline	0.8 x revenue decline	0.4 x revenue decline
<b>Maximum Weekly Benefit Per Employee (on remuneration up to \$1,129)</b>					
	Up to \$677	Up to \$677	Up to \$565	Up to \$452	Up to \$226

### *Calculation of Revenue Decline & Reference Periods*

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In computing an eligible employer's revenue decline for purposes of the Base Subsidy for Period 5 and onwards, the employer may use either the "general approach" or the "alternative approach."

- **General approach:** an employer's revenue decline will be equal to the greater of its percentage revenue decline when comparing the current month to the same month in 2019, and the previous month to the same month in 2019.
- **Alternative approach:** an employer's revenue decline will be determined by comparing either the current month to the average of January and February 2020, or the previous month to the average of January and February 2020.

	<b>Claim Period</b>	<b>Reference Period: General Approach</b>	<b>Reference Period: Alternative Approach</b>
Period 5	July 5 - August 1	July 2020 over July 2019 <b>or</b> June 2020 over June 2019	July or June 2020 over average of January and February 2020
Period 6	August 2 - August 29	August 2020 over August 2019 <b>or</b> July 2020 over July 2019	August or July 2020 over average of January and February 2020
Period 7	August 30 - September 26	September 2020 over September 2019 <b>or</b> August 2020 over August 2019	September or August 2020 over average of January and February 2020
Period 8	September 27 - October 24	October 2020 over October 2019 <b>or</b> September 2020 over September 2019	October or September 2020 over average of January and February 2020
Period 9	October 25 - November 21	November 2020 over November 2019 <b>or</b> October 2020 over October 2019	November or October 2020 over average of January and February 2020

Employers that elected to use the alternative approach for Periods 1 to 4 may maintain that election for Period 5 onwards or may revert to the general approach. Similarly, employers that used the general approach for Periods 1 to 4 may continue using that approach for Period 5 onwards or may elect to use the alternative approach going forward. The chosen approach will apply for Period 5 onwards and will apply to the calculation of both the Base Subsidy and the Top-up Subsidy (if any).

## **Safe Harbour**

For Periods 5 and 6, the new CEWS legislation contains a "safe harbour" rule for eligible employers that would have been better off under the original CEWS rules. Thus, for Periods 5 and 6, an eligible employer who experienced a revenue decline of 30% or more and would have been better off under the CEWS rules in place for Periods 1 to 4 will be eligible for the higher subsidy computed under the original program (in

addition to the Top-up Subsidy, if applicable).

## Top-up Subsidy

A top-up subsidy of up to 25% is available for eligible employers that have experienced a three-month average revenue decline of more than 50%. The top-up subsidy rate is equal to 1.25 times the average revenue decline in excess of 50%, up to a maximum top-up rate of 25% (which is attained at a 70% revenue decline). As with the Base Subsidy, the Top-up Subsidy is calculated on a maximum remuneration of up to \$1,129 per week.

The Top-up Subsidy will be calculated as follows:

Three-Month Average Revenue Decline		Top-up Rate	Top-up Calculation 1.25 x (3-month revenue decline - 50%)
70% and over		25%	$1.25 \times (70\% - 50\%) = 25\%$
65%		18.75%	$1.25 \times (65\% - 50\%) = 18.75\%$
60%		12.5%	$1.25 \times (60\% - 50\%) = 12.5\%$
55%		6.25%	$1.25 \times (55\% - 50\%) = 6.25\%$
50% and under		0.0%	$1.25 \times (50\% - 50\%) = 0.0\%$

### Calculation of Revenue Decline & Reference Periods

Eligibility for the Top-up Subsidy will be determined based on an employer's three-month average revenue decline, using either the general approach or the alternative approach:

	Claim Period	Reference Period: General Approach	Reference Period: Alternative Approach
Period 5	July 5 - August 1	April to June 2020 over June 2019	Average of April to June 2020 over average of January and February 2020
Period 6	August 2 - August 29	May to July 2020 over July 2019	Average of May to July 2020 over average of January and February 2020
Period 7	August 30 - September 26	June to August 2020 over June to August 2019	Average of June to August 2020 over average of January and February 2020
Period 8	September 27 - October 24	July to September 2020 over July to September 2019	Average of July to September 2020 over average of January and February 2020

Period 9	October 25 - November 21	August to October 2020 over August to October 2019	Average of August to October 2020 over average of January and February 2020
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The approach chosen for Period 5 onwards will apply to the calculation of the Base Subsidy and the Top-up Subsidy.

## Eligible Remuneration and Eligible Employees

The definition of "eligible employee" has been amended such that, effective July 5, 2020, employees who are without remuneration for 14 or more consecutive days in an eligibility period are no longer excluded from the subsidy.

The definition of "eligible remuneration" remains unchanged. For active arm's length employees, the amount of remuneration in Period 5 and subsequent periods will be based on actual remuneration paid for a particular period, without reference to "pre-crisis" remuneration. For active employees who do not deal at arm's length with the employer, the wage subsidy will still be based on the employee's weekly eligible remuneration or pre-crisis remuneration, whichever is less, up to a maximum of \$1,129. As was the case prior to these latest amendments, the subsidy will only be available for non-arm's length employees who were employed prior to March 16, 2020.

## Employees on Paid Leave

The Base Subsidy and Top-up Subsidy will not apply to employees on paid leave. However, for Period 5 and subsequent periods, the CEWS for employees on paid leave will nonetheless be available for eligible employers that otherwise qualify for the subsidy. The subsidy in respect of employees on paid leave in Periods 5 and 6 will remain the same as for Periods 1 to 4, and is equal to the greater of:

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

Beginning in Period 7, the subsidy in respect of employees on paid leave will be adjusted to align with the benefits provided under the Canada Emergency Response Benefit and/or Employment Insurance. This adjustment will be addressed by regulation, which has not yet been released. The employer portion of contributions in respect of the Canada Pension Plan, Employment Insurance, the Quebec Pension Plan and Quebec Insurance Plan for employees on paid leave will continue to be refunded to the employer.

## Certain Additional Legislative Changes

- **Application deadline.** The deadline to apply for CEWS has been extended to January 31, 2021.
- **Payroll services.** An employer that does not have its own payroll program account and uses a payroll service provider to administer its payroll may now qualify for the CEWS.
- **Accounting method.** Under the original CEWS legislation, employers that use accrual-based accounting were able to elect to use the cash method of accounting to compute their revenue for purposes of determining the revenue decline. Any eligible employer may now make an election, which will apply for all qualifying periods, to determine its revenue based on the cash method or the accrual method.
- **Amalgamation.** A corporation formed by amalgamation is deemed, for purposes of the CEWS, to be the same corporation as, and a continuation of, each predecessor corporation, unless it is reasonable to consider that one of the main purposes of the amalgamation is to cause the new corporation to qualify for, or increase the amount of, the CEWS. This will allow corporations that have been amalgamated to calculate their revenue decline using the combined revenues of the predecessor corporations, unless it is reasonable to consider that one of the main purposes of the amalgamation was to qualify for, or increase the amount of, the subsidy.
- **Continuity on purchase of a business.** Where an eligible employer has acquired all or substantially all of the assets of a business carried on in Canada by a seller during a qualifying period, the purchaser and the seller may file a joint election such that the purchaser may include the seller's revenue in its revenue in calculating the purchaser's revenue decline for purposes of accessing the CEWS in respect of the purchased business.
- **Appeals.** The legislation provides for an appeal process for the CEWS to the Tax Court of Canada based on existing procedures for notices of determination.

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

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