

FTR Now

Details of Extensive Changes to Employment Insurance and Canada Emergency Response Benefit Announced

Date: August 25, 2020

In the latest evolution of the federal government's response to the ongoing global COVID-19 pandemic, on August 19, 2020, [amendments to the *Employment Insurance Act*](#) (EI Act) were published and, on August 20, 2020, the government [announced](#) new measures to support affected Canadians who continue to be unable to work due to COVID-19. These steps address how employees will transition from the Canada Emergency Response Benefit (CERB) to Employment Insurance (EI), including significant, temporary changes to the EI system to help more employees qualify for EI. The government also announced the introduction of a new temporary Canada Recovery Benefit (CRB) for workers and self-employed individuals.

In this *FTR Now*, we highlight the key details of the amendments and additional announced intended measures.

Transitioning From CERB to EI

When the CERB was first established, it was available for 16 weeks within the period between March 15, 2020 and October 3, 2020. The government then extended the CERB from 16 to 24 weeks within the same period. In its most recent announcement, the government has extended the CERB again, to 28 weeks, but maintained the end date of October 3, 2020.

The government also confirmed its intention to ensure that individuals who still require income support when CERB ends will be able to access the EI system, and provided details of the process for that transition. The process will depend on whether the individual is receiving CERB through Service Canada or the Canada Revenue Agency (CRA) and whether the individual qualifies for EI (based on new qualification requirements, discussed below).

If an individual is receiving CERB through Service Canada, their claim will be automatically transitioned to the EI program once they have received the maximum CERB benefits for which they are entitled, provided that they are EI eligible and continue to need income support. If an individual is receiving CERB through the CRA and believes that they are entitled to EI when CERB ends, the individual will need to apply for EI through Service Canada after September 26, 2020.

To ease the transition to EI, the government has implemented some and announced other changes to the EI program, both to the eligibility requirements and to the minimum benefits that will be

available.

New EI Eligibility Requirements and Minimum Benefits

In normal circumstances, EI claimants must have a minimum number of insurable hours worked over the last year prior to an EI claim (i.e., their qualifying period), which varies based on the unemployment rate in the region. However, in the face of the COVID-19 pandemic, many individuals have not been able to work when they would have otherwise been able to do so. The government has taken some steps and announced others to ease EI eligibility requirements to account for the fact that many individuals would not otherwise have sufficient insurable hours during their claim period, and to facilitate the transition from the CERB to certain special EI benefits or Work Sharing benefits.

First, the government has amended the EI Act to reduce the number of insurable hours required to qualify for EI. It accomplished this by fixing the minimum regional rate of unemployment for all claimants. The unemployment rate in an EI economic region is an important factor used to calculate EI benefits. The rate is used to:

- determine the number of insurable hours to be used in determining eligibility;
- determine the number of weeks of EI benefits payable; and
- determine the number of weeks of insurable earnings used to determine the individual's weekly benefit rate.

Retroactive to August 9, 2020 and for a period of one year, the government has established a minimum unemployment rate of 13.1% for all EI economic regions. Individuals in EI regions with an unemployment rate lower than 13.1% will have their EI benefits calculated on the basis of the 13.1% rate. If an individual is in an EI region with a higher rate of unemployment, the actual higher rate will be used. In practice, this means that the insurable hours requirement for all regions will be set at 420 hours (before the credit discussed below is applied).

In its most recent announcement, the government expressed its intention, on a one-time basis, to grant employees an insurable hours credit, deeming them to have worked insurable hours as follows:

- 300 insurable hours for claims for regular benefits (i.e., in the event of lay-off or job loss)
- 480 insurable hours for claims for special benefits (i.e., in the event of sickness, maternity/parental, compassionate care or family caregiver).

The insurable hours credit means that an individual will be eligible for EI if they worked 120 insurable hours in the applicable qualifying period. The hours credit will be in place for one year.

The government also intends to set the minimum number of weeks of regular EI payments at 26

weeks and establish a minimum benefit rate of \$400 per week for new EI claimants as of September 27, 2020. For claimants starting a new extended parental benefit claim, the minimum benefit rate will be \$240 per week. The weekly benefit rate will be determined using 14 weeks of best earnings during the qualifying period.

Several transition measures will assist workers who need to claim certain EI benefits, such as maternity or parental benefits. The one-time insurable hours credit will be made retroactive to March 15, 2020 for claimants who need to transition from the CERB to EI maternity, parental, compassionate care, family caregiver or Work Sharing benefits but would not otherwise qualify due to insufficient insurable hours. For workers who received the CERB during their qualifying period, that period has been extended for 16 weeks if their claim began before July 5, 2020 or 24 weeks if their claim began after July 5, 2020. Finally, the waiting period for maternity, parental, compassionate care, family caregiver and Work Sharing benefits is waived if the employee received the CERB, unless the employee is eligible for maternity or parental top-up payments during the waiting period from a plan offered by their employer. (The qualifying period is the timeframe prior to the employee's absence from the workplace during which the employee's hours and insurable earnings are determined and then used to determine the individual's eligibility for and the calculation of their EI benefit.)

It does not appear that workers who became eligible for EI benefits prior to March 15, 2020 and who exhausted their EI entitlements after March 15, 2020 and then began receiving CERB, will be able to re-qualify for EI benefits even with the changes to the EI eligibility rules.

Impact on the Canada Emergency Wage Subsidy (CEWS)

While the announcement did not address the impact on CEWS, the proposed changes raise interesting issues that employers who have been or intend to pay monies to active and inactive employees and seek recovery of CEWS will need to address.

For example, for the four-week CEWS claim period that begins August 30, 2020, the subsidy for inactive employees will be the least of the amount paid to the employee and an amount that is to be set by regulation. That amount has not been prescribed yet, but the government previously indicated that it intends to align the CEWS amount for inactive employees with the amounts available under CERB and EI. Given the introduction of a minimum benefit of \$400, it is probable that the amount to be set for the purposes of CEWS paid to inactive employees will not be less than \$400. However, the government has not yet confirmed this detail.

Another issue that may arise will depend on whether individuals will be able to receive more income under the new EI system (or the new government benefits discussed below). In order to be eligible for EI, an individual must be available for and ready to work. The government has not removed this requirement and has also introduced a similar requirement under the new Canada Recovery Benefit program. This is likely intended to prevent circumstances in which an individual is

offered income (or work) by an employer and declines it in order to continue to receive government support. This may assist employers who are considering using CEWS to pay their employees as a tool to manage their workforce, including their inactive employees.

EI Premium Rate Freeze

The government also announced that, while it is easing and simplifying access to EI, EI premium rates will be frozen for two years at the 2020 rates. The 2020 employee rate is \$1.58 per \$100 of insurable earnings. The 2020 rate for employers, which is 1.4 times the employee rate, will also remain unchanged at \$2.21 per \$100 of insurable earnings.

New Government Benefits

In conjunction with the end of the CERB, the government is introducing three new recovery benefits. The CRA will be responsible for administering the new benefits and eligible Canadians will be able to apply through the CRA. The CRA will provide more details on how and when Canadians can apply at www.canada.ca/coronavirus.

The three new benefits are:

- Canada Recovery Benefit (CRB)
- Canada Recovery Sickness Benefit (CRSB)
- Canada Recovery Caregiving Benefit (CRCB)

The government must introduce and pass new legislation to provide for these new benefits when Parliament returns in September.

Canada Recovery Benefit (CRB)

The CRB will be effective from September 27, 2020, for one year. The CRB will pay workers, who are not eligible for EI, \$400 per week for up to 26 weeks. The payment will be taxable.

The CRB will be available to residents in Canada who:

- are at least 15 years old and have a valid Social Insurance Number (SIN);
- have stopped working due to the COVID-19 pandemic and who are available and looking for work, or are working and have had a reduction in income for reasons related to COVID-19;
- are not eligible for EI;
- had employment and/or self-employment income of at least \$5,000 in 2019 or in 2020; and
- have not quit their job voluntarily.

Individuals will need to re-apply every two weeks and each time, confirm that they continue to meet these requirements, including that they are looking for and will accept work “when it is reasonable to do so.”

As with the CERB, individuals receiving the CRB will be able to earn income from employment and/or self-employment while receiving the benefit, but it will be subject to a claw back of \$0.50 of each dollar of CRB paid for every dollar their annual net income (excluding CRB) is over \$38,000. The claw back would be determined when the individual files their tax return for the year in which they received CRB payment.

Canada Recovery Sickness Benefit (CRSB)

The CRSB will pay \$500 per week (which is taxable), for up to two weeks, effective September 27, 2020, for one year. The CRSB will be available for workers who miss a minimum of 60% of their scheduled work in the week because they are sick or must self-isolate due to COVID-19. The CRSB would be available to residents in Canada who:

- are at least 15 years of age and have a valid SIN;
- are employed or self-employed at the time of the application; and
- earned at least \$5,000 in 2019 or in 2020.

No medical certificate will be required. Workers will not be permitted to claim the CRSB and receive other paid sick leave for the same benefit period.

Eligible workers will be required to apply separately for each one-week period for which they are claiming the CRSB.

Canada Recovery Caregiving Benefit (CRCB)

The CRCB, would also be effective from September 27, 2020, for one year, and will pay \$500 per week (also taxable), for up to 26 weeks per household.

The CRCB will be available for individuals resident in Canada who:

- are at least 15 years of age on the first day of the period for which they apply for the benefit and have a valid SIN;
- are employed or self-employed on the day immediately preceding the period for which the application is made;
- have earned at least \$5,000 in 2019 or in 2020;
- have been unable to work for at least 60% of their normally scheduled work within a given week because of one of the following conditions:
- they must take care of a child who is under 12 years of age on the first day of the period for

which the benefit is claimed because:

- of a school or daycare closure or alternative schedule related to COVID-19;
- the child cannot attend school or daycare under the advice of a medical professional due to being at high risk if they contract COVID-19; or
- the caregiver who usually provides care is not available for reasons related to the COVID-19 pandemic;
- they must provide care to a family member with a disability or a dependent because:
 - their day program or care facility is closed or operates under an alternative schedule for reasons related to COVID-19;
 - the dependent cannot attend their day program or care facility under the advice of a medical professional due to being at high risk if they contract COVID-19; or
 - because the caregiver who usually provides care is not available for reasons related to the COVID-19 pandemic;
- are not in receipt of paid leave from an employer in respect of the same week; and
- are not in receipt of the CERB, the EI Emergency Response Benefit (ERB), the CRB, the CRSB, short-term disability benefits, workers' compensation benefits, or any EI benefits or Quebec Parental Insurance Plan (QPIP) benefits in respect of the same week.

Individuals would apply after each week for which they are seeking income support. Two members residing in the same household could not be in receipt of the benefit for the same period.

We continue to monitor all developments regarding the government programs relating to the COVID-19 pandemic and will provide further updates when the government introduces the necessary legislation or regulations, as applicable, to support the new measures that have not yet been implemented.

If you have any questions regarding the governments latest announcement or how these changes impact your organization, please contact any member of our [Pension, Benefits and Executive Compensation practice group](#).