

FTR Now

The End of CERB – The New Recovery Benefits and Temporary EI Changes

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The federal government has implemented a suite of new income support benefits, including adjustments to the Employment Insurance (EI) system, to address the ongoing economic effects of the COVID-19 pandemic and the end of the Canada Emergency Response Benefit (CERB).

On October 2, 2020, Bill C-4, the [COVID Response Measures Act](#), received Royal Assent. Bill C-4 enacts the *Canada Recovery Benefits Act*, which creates three new recovery benefits to replace the CERB. Bill C-4 also amended the *Canada Labour Code* (CLC) in respect of the Leave Related to COVID-19 (for details of the CLC amendments, see our *Federal Post COVID-19 Leave in Canada Labour Code to be Extended*).

Bill C-4 codifies the details previously announced by the federal government regarding the transition to new recovery benefits summarized in our earlier *FTR Now* [Details of Extensive Changes to Employment Insurance and Canada Emergency Response Benefit Announced](#). In this *FTR Now*, we discuss these recovery benefits, as enacted by Bill C-4, and provide some additional updates regarding transitional changes to the *Employment Insurance Act* (EI Act).

Background – Transitioning from CERB

When the CERB was first established, it temporarily supplanted access to regular and sickness EI benefits, and was intended to be available for 16 weeks within the period between March 15, 2020 and October 3, 2020. The government then extended the maximum number of weeks a claimant could receive the CERB from 16 to 24 weeks within the same period, and then finally to 28 weeks. However, the expiry date of October 3, 2020 was not changed and, as a result, the transition from the CERB began on September 27, 2020.

In support of the transition from CERB back to regular EI benefits, temporary amendments have been made to the EI Act by interim order for the period from September 27, 2020 to September 11, 2021, inclusive.

To support workers who do not qualify for EI, the three benefits under the *Canada Recovery Benefit Act* will be in place for the period from September 27, 2020 to September 25, 2021, inclusive.

Details regarding the transitional changes to EI benefits and the new recovery benefits, all of which will be providing benefits equal to \$500 per week, are described below. The government's backgrounder regarding these changes can be accessed [online](#).

Temporary Changes to EI

As explained in our last *FTR Now* regarding the transition from CERB to EI benefits, changes to the EI Act have been made to harmonize the eligibility requirements and availability of EI benefits across Canada. A significant measure to aid employees in accessing EI benefits has been the temporary reduction in the maximum number of insurable hours required to qualify for regular EI benefits to 420 hours, along with a one-time insurable hours credit. The credit will deem such employees to have worked insurable hours as follows:

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

leave, compassionate care leave, or family caregiver leave).

The insurable hours credit means that an individual will be eligible for EI benefits if they worked 120 insurable hours in the applicable qualifying period, which is extended by any period during which the employee received the CERB. The hours credit will be in place for one year. The changes also result in an individual's EI benefit being calculated using the individual's best 14 weeks of earnings, and regular EI benefits being available for a minimum of 26 weeks, regardless of the EI economic region in which the claimant lives.

Employees who had applied for the CERB through Service Canada were part of an automatic transition to EI. Employees switching to EI from the CERB effective September 27, 2020 were eligible for their first EI payment as of October 11, 2020. The government had expected that over 80% of eligible Canadians would receive their first EI payment by October 14, and over 90% within three to 14 days. Employees who had applied for the CERB through the Canada Revenue Agency will need to make a new EI claim through Service Canada.

Also as previously reported, the EI premium rate has been temporarily frozen to the current 2020 level for two years. The rate for employees will remain at \$1.58 per \$100 of insurable earnings, and the rate for employers (which is 1.4 times the employee rate) will remain at \$2.21 per \$100 of insurable earnings.

Since our last *FTR Now*, the government has made additional temporary amendments to the EI Act.

Minimum Weekly Benefit of \$500

The minimum EI weekly benefit rate has been temporarily fixed to \$500 per week to support the transition from the CERB and align with the new recovery benefits discussed below. It was originally announced that the minimum weekly EI benefit rate would be \$400 per week. Amendments to the EI Act to support the higher minimum amount of \$500 per week were recently made by interim order. It should be noted that, unlike with the CERB, higher earning employees can receive more than \$500 per week if they are eligible based on their insurable earnings (up to the maximum weekly benefit of \$573 per week for 2020).

The higher minimum weekly EI benefit also applies for EI special benefits, including maternity and parental EI benefits. For employees who take a parental leave while the minimum weekly EI benefit of \$500 is in place and who choose to receive extended (rather than standard) EI parental benefits, the new minimum benefit will result in an extended minimum parental benefit of \$300 per week.

Temporary Waiver of Waiting Period Prior to October 25, 2020

EI claimants are required to experience an interruption of earnings (generally, seven consecutive days of no work and no earnings) prior to qualifying for benefits. This period generally coincides with the one-week waiting period to receive EI benefits. However, on a temporary basis, the one-week EI waiting period has been waived for all new claims commenced between September 27, 2020 and October 25, 2020. Exceptions apply if the claimant is eligible for a top-up payment under a supplementary unemployment benefits plan (SUB Plan) during the waiting period.

Temporary Suspension of Allocation of Separation Payments

In the normal course, if a laid off or terminated employee receives termination or severance pay, it will delay the commencement of their EI benefits or result in an overpayment if EI benefits have already been paid. On a temporary basis, "most separation monies" received as a result of lay-off or termination will not affect the payment of EI benefits on and after September 27, 2020. This includes lump sum vacation pay and all earnings paid as a result of a lay-off or separation from employment (such as severance). Vacation pay that is paid for reasons other than a lay-off or separation from employment will also be ignored.

As a result, employees who receive additional earnings as a result of a settlement, lay-off, or termination and: (a) who began an EI claim on or after September 27, 2020 or (b) whose claim began earlier but the payments had not been previously reported to the EI Commission and relate to weeks on or after September 27, 2020, will not experience an interruption in their EI benefits when they receive these earnings and will not face an immediate repayment obligation.

Existing Requirements

The requirements to complete bi-weekly reports and to be available for and looking for work in order to be eligible for regular EI benefits have not changed. Tax will also continue to be deducted at source. If a claimant does work while on claim, those earnings must be reported and the existing rules applicable to the reduction of EI benefits when claimants receive earnings also continue to apply.

Under existing rules, some higher earnings employees may also face EI repayment obligations when they file their tax returns if they have collected regular EI benefits in the previous 10 years and their net income from all sources exceeds 1.25 times the maximum insurable earnings for the year (in 2020, 1.25 times the maximum insurable earnings is \$67,750).

Following the end of the CERB, registered SUB Plans can once again be used by employers to assist their employees who are receiving EI benefits by “topping-up” such benefits up to 95% of the employees’ normal weekly earnings. While the CERB was in place, registered SUB Plans could not be used to top-up CERB payments.

Employers who issued Records of Employment (ROE) previously in respect of employees who were not working do not need to issue another ROE now that any such employees who remain off work are transitioning to EI.

EI Sickness Benefits Waiver of Waiting Period and Medical Certificate Requirement

Employees who make a claim for EI sickness benefits in the period between September 27, 2020 and September 11, 2021, inclusive, will not be required to serve the one-week waiting period, even after the temporary waiver of the one-week waiting period expires for all other EI claims on October 25, 2020. The requirement to provide a medical certificate to access EI sickness benefits has also been suspended.

The EI Commission has also been provided the authority to waive the requirement to provide a medical certificate to access critically ill child or critically ill adult EI benefits if necessary.

New Recovery Benefits: Canada Recovery Benefit, Canada Recovery Sickness Benefit, and Canada Recovery Caregiving Benefit

The *Canada Recovery Benefits Act* creates three new benefits for employed or self-employed persons who are unable to work for reasons related to the COVID-19 pandemic for the period between September 27, 2020 and September 25, 2021, inclusive.

Each of the Canada Recovery Benefit (CRB), Canada Recovery Sickness Benefit (CRSB), and Canada Recovery Caregiving Benefit (CRCB) provides a \$500 per week benefit for a prescribed number of weeks. Importantly, individuals cannot be in receipt of EI benefits, the CRB, and CRSB, or the CRCB at the same time.

When these recovery benefits were originally announced this past summer, it was expected that the CRB would be fixed at a rate of \$400 per week while the CRSB and CRCB would provide \$500 per week. The benefit rate of the CRB has now been aligned to match the prior weekly benefit under the CERB and the minimum EI weekly benefit rate described above. However, unlike with CERB payments, taxes will be withheld at source from each of the new recovery benefits at a fixed rate of 10%, such that recipients of the CRB, CRSB, and CRCB will receive a net payment of \$450 per week.

The eligibility criteria for each of the three new recovery benefits varies to align with the intended purpose of each but are broadly consistent with the eligibility criteria for the CERB, including the criteria that each applicant must:

- be at least 15 years of age on the first day of the period for which they are applying for the benefit
- have a valid Social Insurance Number (SIN)
- be employed or self-employed at the time of the application
- have earned at least \$5,000 in 2019 or 2020, or in the 12 months preceding the day of their application, and
- not be in receipt of paid leave during the period claimed.

Additional criteria apply for each of the CRB, CRSB, and CRCB, the details of which are provided below.

- **Canada Recovery Benefit (CRB):** The CRB provides a recovery benefit of \$500 per week (available in two-week periods) for up to 26 weeks for those who have stopped working and who are not eligible for EI, or had their employment/self-employment income reduced by at least 50% due to the COVID-19 pandemic. For a claim beginning in 2020, the 50% income reduction is based on the claimant's average weekly income earned in 2019 or the 12-month period preceding the claim. For a claim beginning in 2021, the 50% income reduction is based on average weekly income earned in 2019, 2020, or the 12-month period preceding the claim. Similar to EI, individuals claiming the CRB must seek work during the two-week period claim periods, and will not be eligible for payment if they have quit or voluntarily left employment or declined reasonable work opportunities. The CRB does not have any specific rules about how much income can be received while collecting the CRB, but there is a claw back based on overall net income that will be determined when a CRB claimant files their tax return. Claimants will need to repay \$0.50 of the benefit for each dollar of their annual net income above \$38,000 in the calendar year, up to a maximum of the amount of CRB they received.
- **Canada Recovery Sickness Benefit (CRSB):** The CRSB provides a weekly sickness benefit of \$500 per week for up to two weeks for persons who cannot work for at least 50% of the time that they would have otherwise worked in the week for which they claim the benefit because they: (i) may have contracted COVID-19, (ii) have contracted COVID-19, (iii) have been advised to self-isolate for reasons related to the COVID-19 pandemic, or (iv) have underlying conditions or are undergoing treatments that make them more susceptible to COVID-19. The fourth category of individuals was not originally included when the government first announced the CRSB but was added to the legislation before it was passed, expanding the scope of the benefit and aligning it with a leave made available under the CLC for federally regulated employees.
- **Canada Recovery Caregiving Benefit (CRCB):** The CRCB provides a weekly benefit to those who are unable to work at least 50% of the time that they would have otherwise worked in the week because they had to care for a child under the age of 12 or another family member who requires supervised care due to: (i) the school, daycare, day program, or facility that the child or family member normally attends being unavailable, closed or open only certain times or for certain individuals, (ii) the care services or the person that usually cares for the child or family member being unavailable due to the COVID-19 pandemic, (iii) the child or family member is sick and/or has been directed to quarantine for reasons related to the COVID-19 pandemic, or (iv) the child or family member is at high risk of serious health complications if they contracted COVID-19. The CRCB is available for up to 26 weeks. However, the available 26 weeks must be shared by each household. If two or more eligible claimants reside in the same household, the benefit can be shared but only one individual may be paid the CRCB for any particular week.

Applications for the new recovery benefits are processed by the Canada Revenue Agency and opened on October 12, 2020 (links to the applications are available [online](#)). Applications for the CRSB and CRCB must be completed on a weekly basis while applications for the CRB are completed on a bi-weekly basis.

The government has noted that the applications for the new recovery benefits will have more robust verification measures than the CERB application. The applications are designed to reduce the potential for repayment obligations to arise by



requiring that individuals apply retroactively for benefits that they may be entitled to. Despite the additional verification measures, individuals applying for the CRSB will not be required to produce a medical certificate.

We continue to monitor all developments regarding the government programs relating to the COVID-19 pandemic. If you have any questions regarding the government's latest announcement or how these changes impact your organization, please contact any member of our [Pension, Benefits and Executive Compensation Group](#)