FTR Now

Cuing Up CEWS Through June 2021: Details Confirmed Through March 13, 2021

Date: December 3, 2020

The Canadian government has announced the details of the extension of the Canada Emergency Wage Subsidy (CEWS) program into June 2021.

CEWS was established in March 2020 to support employers, and their employees, during the COVID-19 pandemic by providing a subsidy with respect to eligible remuneration paid by eligible employers who have experienced reduced revenues due to the pandemic. Since March, the CEWS program has been significantly altered several times. Our previous communications on CEWS can be found in our *FTR Nows* of July 29, 2020 and October 16, 2020.

Most recently, there was a flurry of activity to reflect the modified rules applicable to the fall 2020 claim periods. The government published new regulations setting the subsidy rate applicable to inactive employees for periods 9 and 10 (starting October 25, 2020). Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)* (Bill C-9), which received Royal Assent on November 19, 2020, permits the extension of CEWS into June 2021 and extended the period 8 base and top-up rates through periods 9 and 10 along with other refinements. Coinciding with this activity, the government updated its frequently asked questions (the "FAQ") on November 23, 2020, and, prior to that on November 5, 2020, published a new background document explaining the latest changes to the CEWS program. Finally, in the Fall Economic Statement, which was released on November 30, 2020, the government announced the details of the program through to March 13, 2021.

In this *FTR Now*, we have summarized those changes and updates of interest to employers applying for CEWS (or considering applying for CEWS in the future).

Changes Impacting Periods 9 (November 2020) and 10 (December 2020)

First, through Bill C-9, the government has confirmed the subsidy calculation for CEWS claim periods 9 (October 25, 2020 – November 21, 2020) and 10 (November 22, 2020 – December 19, 2020). In so doing, the government changed the maximum base rate for these periods and the manner in which revenues are calculated for purposes of determining whether an employer is eligible for the top-up subsidy.

Maximum Base Subsidy Rate Held At 40%

As described in our prior *FTR Now*, starting with CEWS claim period 5 (July 5, 2020 – August 1, 2020), the CEWS subsidy rate applicable to eligible remuneration paid to active employees was broken into two components: a base rate and a top-up rate. The base rate was intended to reduce over each subsequent claim period.

The maximum applies when an employer experiences a revenue decline of 50% or greater within the claim period (or the prior month) when compared to the same month in 2019 or, alternatively, to the average of revenue earned in January and February 2020 (as applicable based on the employer's election). If an employer experiences a decline of less than 50%, the base rate is determined based on 0.8 times the percentage of reduced revenue. The original maximum base rate for period 9 was intended to be 20%, which would be a reduction from a 40% maximum applicable in CEWS period 8 (September 27, 2020 – October 24, 2020). No rate had been previously prescribed for period 10.

Bill C-9 has amended the *Income Tax Act* (ITA) to hold the maximum CEWS base rate at 40% for both CEWS claim periods 9 and 10 for employers that experience a revenue reduction of at least 50%. For employers with a revenue reduction of less than 50%, the base rate calculation is held at 0.8 times the percentage of reduced revenue.

Top-Up Subsidy Revenue Calculation Changed

The top-up subsidy of up to 25% is available under the CEWS program for employers most adversely impacted by the pandemic, i.e., those who experience an average reduction of at least 50%, with the maximum top-up subsidy applicable to employers experiencing a revenue decline of 70% or greater.

For CEWS claim periods 5 (July 5, 2020 – August 1, 2020) through 7 (August 30, 2020 – September 26, 2020), an eligible employer's top-up wage subsidy in respect of active employees is determined based on the average revenue drop over the preceding three months compared to the same three months in the prior year (or, alternatively, based on comparing average monthly revenue in the preceding three months to the average monthly revenue in January and February 2020).

For CEWS claim periods 8 (September 27, 2020 – October 24, 2020) to 10 (November 22, 2020 – December 19, 2020), the government has changed the revenue-decline test for the top-up wage subsidy to align with the test used to determine the base subsidy rate. Instead of using the average revenue-decline test described above, both the base and top-up wage subsidies are now determined based on the change in an eligible employer's monthly revenues for either the current or previous calendar month compared to the same month in 2019 (or, if the employer has elected the alternative method, the average of January 2020 and February 2020 revenues). An employer with a 70% or greater revenue decline in a single month is now eligible for the 25% top-up subsidy plus the 40% base subsidy, for a maximum combined CEWS subsidy of 65%.

It should be noted that employers are not permitted to change their election with respect to the revenue reduction method that they use (i.e., the general or alternative method) and should continue to use the method already selected for claim period 5 and on.

Safe Harbour For Periods 8-10

For CEWS periods 8 through 10, an employer remains entitled to a top-up wage subsidy rate not lower than the rate that it would be entitled to using the three month average revenue decline test. If an employer's single month revenue decline is less than 70% but the average decline using the three-month test would be at least 70%, the employer will continue to be eligible for the 25% top-up subsidy rate.

Inactive Employees Subsidy Rate

Payments made to employees who are not working (i.e., employees "on leave with pay") are not eligible for the same subsidy under CEWS that is applicable to payments to active employees. Starting on October 25, 2020, the wage subsidy for furloughed employees has been adjusted to align with the benefits provided through Employment Insurance (EI).

The wage subsidy calculation for a furloughed employee is now the lesser of:

- the amount of eligible remuneration paid in respect of the week; and
- the greater of:
    - $500, and
    - 55% of pre-crisis remuneration for the employee, up to a maximum subsidy amount of $573.

The government published regulations under the ITA on November 25, 2020 confirming this subsidy rate for CEWS periods 9 and 10. Using this rate, an employer can pay furloughed employees up to $500 (which is the new temporary minimum rate available under the EI program and the new Canada Recovery Benefits), and the employer can recover the full amount paid through CEWS. If an employer wishes to pay in excess of $500, it can recover up to $573 (which is the maximum EI benefit in 2020) depending on the employee's pre-crisis remuneration (i.e., baseline remuneration as defined in the ITA).

The employer portion of contributions in respect of the Canada Pension Plan/Quebec Pension Plan, EI, and the Quebec Parental Insurance Plan, as applicable, in respect of furloughed employees continue to be refunded to employers.

In the Fall Economic Statement, the government announced that the current rules applicable to CEWS for inactive employees will continue to apply until at least March 13, 2021. However, effective December 20, 2020, the maximum subsidy will be increased to $595 instead of $573.

CEWS Extended to June 2021: Details Available Through March 13, 2021

CEWS was originally established as a three month program (i.e., with three potential claim periods over March 15, 2020 – June 6, 2020). As the COVID-19 pandemic continued on, as we previously reported on July 29, 2020, the government extended the CEWS program through November 21, 2020 (providing nine claim periods in total), with the possibility of a further claim period in December 2020 (which has since been confirmed as the 10th claim period).

The government has now adopted further amendments to the ITA through Bill C-9 to provide for the extension of the CEWS program through June 2021. In the Fall Economic Statement released on November 30, 2020, the government announced the details associated with the next three claim periods starting December 20, 2020 and ending March 13, 2021.

The Fall Economic Statement indicates that the government intends to increase the maximum CEWS rate applicable to CEWS claims periods 11 (December 20, 2020 – January 16, 2021), 12 (January 17, 2021 – February 13, 2021) and 12 (February 14, 2021 – March 13, 2021). The maximum combined CEWS rate will be 75% during these claim periods.

Rather than increase the maximum base subsidy rate, the maximum base subsidy rate will remain 40% but the maximum top-up subsidy rate will be increased from 25% to 35%. The following chart reflecting the rates for periods 11 to 13 is excerpted from the Fall Economic Statement:

Canada Emergency Wage Subsidy Rate Structure, Periods 11 to 13
(December 20, 2020 to March 13, 2021)
Revenue decline

70% and over

50-69%

1-49%

Canada Emergency Wage Subsidy Rate Structure, Periods 11 to 13
(December 20, 2020 to March 13, 2021)
Revenue decline

For the purposes of determining an employer's decline in revenue in respect of the new CEWS claim periods, the Fall Economic Statement confirmed the general approach will continue to compare revenues on a year-over-year basis and an employer may also elect to use the alternative approach, comparing the change in the employer's monthly revenues to the average of its revenues in January 2020 and February 2020 before the pandemic hit. The deeming rule will continue to provide that an employer's decline in revenues for any particular qualifying period is the greater of its decline in revenues for the particular qualifying period and the immediately preceding qualifying period.

The following table (excerpted from the Fall Economic Statement) sets out the proposed reference periods with respect to the CEWS claim periods between December 20, 2020 and March 13, 2021:

Timing	**Period 11 December 20, 2020 – January 16, 2021**	**Period 12 January 17, 2021 – February 13, 2021**	**Period 13 February 14, 2021 – March 13, 2021**
General approach	December 2020 over December 2019 or November 2020 over November 2019	January 2021 over January 2020 or December 2020 over December 2019	February 2021 over February 2020 or January 2021 over January 2020
Alternative approach	December 2020 or November 2020 over average of January and February 2020	January 2021 or December 2020 over average of January and February 2020	February 2021 or January 2021 over average of January and February 2020

Once again, employers that had elected the general approach for prior periods will continue to use that approach and employers that had elected the alternative approach will continue to use the alternative approach. The government has not provided a new opportunity to switch methods. According to the Fall Economic Statement, all the other parameters of the program would remain unchanged.

These proposed changes need to be implemented through amendments to the ITA Regulations. Details for CEWS for any periods beyond March 13, 2021 will be proposed at a later date.

Important Clarifications Regarding Eligible Remuneration

In addition to the changes to the calculation of the subsidy rate, the government has amended the ITA to address the calculation of baseline remuneration for employees who have been on a leave of absence. The government has also updated the FAQ to clarify several important elements regarding the calculation of eligible remuneration for which the employer can seek the subsidy.

Calculation of Baseline Remuneration For Employee Returned From Leave

Baseline remuneration has been an important feature of the CEWS program. Baseline remuneration means the average weekly eligible remuneration paid to an eligible employee by an eligible employer during the period beginning January 1, 2020, and ending March 15, 2020 (excluding any period of seven or more consecutive days without pay). Alternative periods were introduced for each claim period to address employees who did not work during the 2020 determination period.

However, employees who were on leave might not have baseline remuneration, even during the alternative reference periods. To address this, the ITA has been amended to allow employers to calculate baseline remuneration in respect of employees returning from maternity leave, parental leave, caregiver leave or long-term sick leave by calculating the average remuneration paid over the 90-day period immediately before the commencement of the applicable leave of absence. An eligible employer can elect for each qualifying period from CEWS claim periods 5 on, a special baseline remuneration period in respect of an eligible employee returning from a continuous maternity, parental, caregiver, or long-term sick leave that began before July 1, 2019 and ended after March 15, 2020. The special remuneration period would be the 90-day period ending immediately before the beginning of the employee’s leave period.

Salary Continuation May Be Eligible Remuneration

Although retiring allowances are explicitly excluded from the definition of “eligible remuneration” under the ITA, on November 23, 2020, the FAQ was updated to indicate that salary continuance payments to terminating employees will be considered eligible for CEWS purposes if certain conditions are met. To be eligible, the government expects that the employment relationship continues, which in its view would mean that employment benefits, like pension and group benefits, would continue.

The updated FAQ clarifies, however, that employees who are receiving salary continuance are to be considered “active” for purposes of CEWS even if they are not working. This means that the inactive employee CEWS subsidy rate does not apply, including the ability to claim a refund of the employer CPP and EI contributions associated with the pay.

Employers must carefully consider whether salary continuation arrangements qualify for the subsidy before making the claim.

Supplementary Unemployment Benefit (SUB) Payments Are Eligible Remuneration

The FAQ was also updated on November 23, 2020 to explicitly address whether payments from SUB plans are eligible remuneration. According to the update, when an employer directly pays the SUB plan benefit, the benefit constitutes eligible remuneration for purposes of CEWS. If, on the other hand, the SUB plan benefit is not paid directly by the employer (e.g., it is paid through a trust fund), the SUB plan benefit is not eligible remuneration and does not qualify for CEWS.

Bonus Payments Must Be In Respect of A Period

The FAQ has been updated to provide guidance with respect to how a bonus is to be reflected in the calculation of the subsidy and separately, the calculation of baseline remuneration.

While a bonus is generally salary, wage and remuneration, such that it falls within the definition of eligible remuneration, only eligible remuneration paid by an eligible employer to an eligible employee in respect of a week in a claim period is included for purposes of computing the wage subsidy. The FAQ indicates that an annual bonus is considered to be earned throughout the fiscal period to which it relates, such that it should be allocated over the applicable period. Therefore, an eligible employer may need to do a manual calculation to determine the amount of any bonus that was paid in respect of each week in the claim period.

In contrast, for the purposes of computing baseline remuneration in respect of an eligible employee for a claim period (rather than the calculation of the subsidy itself), the updated FAQ indicates that the bonus amount must be paid during the relevant baseline remuneration period. It would also be reasonable according to the FAQ to calculate the average weekly eligible remuneration by dividing the bonus amount by the number of weeks included in the period to which it relates.

Other Changes of Note to the CEWS Program

Application Period

With the extension of the wage subsidy, the deadline to make an application for a qualifying period is now the later of January 31, 2021 or 180 days after the end of the applicable qualifying period.

Eligible Employees

Eligible employees are employees for whom CEWS can be claimed. An amendment to the definition “eligible employee” is intended to ensure that only employees employed primarily in Canada during a qualifying period will be considered eligible employees for the purpose of CEWS. The government is of the view that this means someone is physically present and performing their duties in Canada. When that place is located outside Canada, that person will not generally be considered as being “employed in Canada”. In addition, the government expects the employee to be employed in Canada more than 50% of the time throughout the claim period.

It is not clear how this affects an employee who would normally be physically present in Canada but is working remotely in another country due to pandemic restrictions.

T4 Reporting

The government has announced new T4 reporting related to the CERB and CEWS programs. T4’s for 2020 must include new codes in the “other information” at the bottom of the T4 slips, as follows:

Code 57: Paid employment income during – March 15 to May 9

Code 58: Paid employment income during – May 10 to July 4

Code 59: Paid employment income during– July 5 to August 29

Code 60: Paid employment income during– August 30 to September 26

Income must be broken down and reported using these codes, in addition to box 14, which applies to employment income paid in the year.

CEWS remains an evolving program and further announcements are expected in respect of the claims periods following March 13, 2021. We continue to monitor all developments regarding CEWS and will provide further updates when new details are released by the government. Please contact any member of our Pension, Benefits and Executive Compensation Group if you have questions regarding benefits available to your organization under the CEWS program.