

# Canadian Employment Law Guide

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## FEDERAL GOVERNMENT RELEASES FURTHER DETAILS FOR COVID-19 ECONOMIC RELIEF

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[Editor's Note: Readers should be aware that this article was originally written on April 2, 2020 and since then, the contours and details of the Canada Emergency Wage Subsidy have shifted significantly. On April 8, 2020, the federal government announced additional changes to the proposed Canada Emergency Wage Subsidy, and on April 11, 2020, the COVID-19 Emergency Response Act, No. 2, SC 2020, c. 6, received Royal Assent. For the latest information on the Canada Emergency Wage Subsidy, see: <https://www.canada.ca/en/department-finance/news/2020/04/additional-details-on-the-canada-emergency-wage-subsidy0.html>. A summary of the April 8, 2020 announcement written by the team at Hicks Morley Hamilton Stewart Storie LLP may be found here: <https://hicksmorley.com/2020/04/09/additional-details-of-canada-emergency-wage-subsidy-and-enhanced-summer-jobs-program-released/>, and their summary of the legislation may be found here: <https://hicksmorley.com/2020/04/13/federal-wage-subsidy-legislation-passed/>.]

On April 1, 2020, the federal government provided important information about the previously announced expanded wage subsidy program and the Canada Emergency Response Benefit (CERB).

### Wage Subsidy—Details

The federal government has provided further details about the Canada Emergency Wage Subsidy (CEWS), first announced on March 30, 2020. The CEWS will be available in respect of "eligible remuneration paid" between March 15 and June 6, 2020.

The subsidy on "eligible remuneration paid" for each employee will be calculated as the greater of:

- 75% of the amount of remuneration paid, up to a maximum of \$847 per week, and
- the amount of remuneration paid, up to the lesser of \$847 per week and 75% of the employee's "pre-crisis weekly remuneration." More details are expected on how to determine an employee's "pre-crisis weekly remuneration."

Very roughly, this equates to a 75% subsidy during the period on annualized earnings up to \$58,700. The government gave an example of an employee who earns \$800 per week. With this subsidy, the employer would be eligible to continue paying the employee \$800 and receive a subsidy of \$600 for that employee.

"Eligible remuneration" includes salary, wages, and other amounts that would normally be subject to tax withholding, but does not include severance pay, or items such as stock option benefits or the standby charge for personal use of an employer vehicle.

The CEWS is available to employers who have faced a 30% or more decline in gross revenue earned from carrying on business in Canada from arm's length sources. Revenue from extraordinary items and amounts on account of capital will be excluded from gross revenue, as will revenue from non-arm's length sources. The employer can otherwise use its normal accounting method to determine its "gross revenue."

The CEWS will be available for each month starting March 15, 2020 where there is a comparative 30% decline in gross revenue to the prior year. The decline in gross revenues will be determined for March, April, and May 2020 by comparing revenues to the same month in 2019. If the decline continues through all three months, it will be available for each of those months. For example, if revenues in March 2020, dropped at least 30% compared to March 2019, the employer would be eligible for the subsidy on remuneration paid between March 15, 2020 and April 11, 2020. The second period runs from April 12 to May 9, 2020 for a decline in April and the third from May 10 to June 6, 2020 for a decline in May.

The government has stated it is working on how to deal with new businesses (e.g. those who were established after February, 2019) and hopes to provide details in the coming days on a reasonable benchmark for them.

Important details of the CEWS to keep in mind are:

- It will be in place for a 12-week period, from March 15 to June 6, 2020.
- It will be available to businesses of every size across all sectors, including the hospitality sector, regardless of their number of employees.
- Eligible businesses include individuals, partnerships and taxable corporations.
- Non-profit organizations and registered charities are eligible. The government is working out the details of how to determine if charities and non-profit entities have experienced an eligible decline in revenue.
- **Public sector entities are excluded from eligibility for the CEWS; this would include municipalities, local governments, public universities, colleges, schools, hospitals and Crown corporations.**
- Employers will need to confirm that they are making best efforts to pay the remaining 25% to maintain their employees' pre-crisis remuneration, but the Prime Minister did state that the system will be flexible.
- The subsidy will be considered taxable government assistance to the employer. Employers should speak to their tax professionals to determine the tax implications to their organization of receiving the subsidy.
- Employers will be able to apply online through the Canada Revenue Agency (CRA) *My Business Account* portal or a web application that will launch in approximately three to six weeks, and funds will be available in approximately six weeks or less if the employer is registered for direct deposit.
- Eligible employers will need to reapply each month.
- Organizations that do not qualify for the CEWS may continue to qualify for the previously announced wage subsidy for small businesses, non-profits and charities of 10% of remuneration paid from March 18, 2020 to before June 20, 2020 up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer.

Administrative details regarding CEWS are promised as soon as possible.

The government issued two strong messages to employers:

1. Get ready to re-hire workers; and
2. There will be severe penalties for any misuse of the CEWS, ranging from repayment of the entire subsidy received to more severe penalties for fraud.

New offences subject to fines and/or imprisonment for misuse may also be created.

The cost of the CEWS is estimated to be \$71 billion, which will reduce the expected cost of the new CERB to \$24 billion.

Legislation to implement the CEWS will be necessary and the government signalled that Parliament will be recalled in the near future to consider the proposal.

## Implications for Workforce Planning

In this unusual environment, employers have been challenged by the limited job retention options, the restrictions under applicable employment standards legislation (such as the Ontario *Employment Standards Act, 2000*), and collective agreement provisions.

The CEWS may bolster the ability to continue operating essential businesses despite reductions in revenue. For businesses unable to operate, or only able to operate partially, the CEWS may offer the ability to provide income support to employees (including the provision of paid shut-downs to affected employees).

With the availability of the CEWS, employers are encouraged to again review the status of their operations, including whether temporary lay-offs are necessary (or if the CEWS will permit a recall from an existing lay-off).

With these fast moving developments, the application of the CEWS to workforce planning will be complex, and especially so where workforce adjustment plans have already been engaged while waiting for the CEWS and other relief measures. Employers are encouraged to seek legal advice when determining how to proceed and communicate with employees.

## Canada Emergency Response Benefit (CERB)

In addition to the information previously announced, additional important details about the administration of the CERB were announced on April 1, 2020.

In particular, the federal government has confirmed that anyone who became eligible for regular and sickness Employment Insurance (EI) benefits on and after March 15, 2020 will receive the CERB. This will include a retroactive payment to March 15 for those who have already stopped working due to COVID-19.

Applicants who became eligible for EI benefits prior to March 15 will continue to be processed under the existing EI system, as will claims for EI benefits in respect of absences from employment for non-COVID-19 related reasons, such as pregnancy and parental leave.

Further details are set out below:

- for those who have not yet applied for EI before April 6, 2020, the application system has been set up to accept applications starting on April 6, 2020 on certain days of the week, determined by month of birth as follows:
  - Mondays, starting April 6 – January to March
  - Tuesdays, starting April 7 – April to June
  - Wednesdays, starting April 8 – July to September
  - Thursdays, starting April 9 – October to December
  - Fridays, Saturdays, and Sundays – Birthdays in any month
- the application will be available at [Canada.ca/coronavirus-CERB](https://Canada.ca/coronavirus-CERB)
- eligibility is triggered by 14 consecutive days without employment and other specified income during the first four-week period; for subsequent four-week periods, the employee must confirm they have received no employment income and other specified income in the prior four-week period and expect no income during the subsequent four weeks
- there has been no confirmation that employers can top up the CERB as would have been permitted for regular and sickness EI benefits through a Supplemental Unemployment Benefits (SUB) plan registered with Service Canada
- the amount available is \$500/week, or \$2,000 paid every 4 weeks
- payments will be made by direct deposit in three to five days after applying, and within 10 days if mailed by cheque
- the payment is taxable but no tax will be deducted from the payment at source
- higher earners who would have received more under the EI system will be limited to the \$500/week (similarly, those who would have received less under the EI system, will also receive \$500/week)



- the benefit is for workers with no income, not those working reduced hours
- students who expected to start summer jobs are not eligible
- to apply, the worker will need to provide personal contact information, their Social Insurance Number, and confirm that they meet the eligibility requirements; they may be asked to provide additional documentation to verify eligibility at a future date
- applicants will be asked simple questions that help direct them to one of two service options:
  - Canadians who would generally be eligible for EI benefits will be directed to apply for the CERB through Service Canada through Appliweb, or
  - Canadians who would generally not be eligible for EI benefits will be directed to apply for the CERB through their CRA MyAccount or CRA's automated toll-free line at 1-800-959-2019.
- Canadians calling the toll-free line at 1-800-959-2019 will be connected to the CRA's automated telephone system, which is a dedicated line for CERB applications.

## Canada Revenue Agency Requirements to Pay (RTP)

The CRA has also announced that it is not currently sending any Requirements to Pay to employers in respect of outstanding tax debts owed by employees, and is not requiring action on any RTPs employers may have received at an earlier date. Employers are not required to deduct amounts under an RTP and remit them to the CRA until further notice.

Please contact any member of the Pension, Benefits and Executive Compensation Group or your regular Hicks Morley lawyer if you have any questions about how these developments affect your business.

*As a pension and benefits lawyer in Hicks Morley's Toronto office, **Stephanie Kalinowski** advises employers, plan administrators and service providers on all regulatory, governance, compliance and tax matters affecting pension, retirement and group benefit plans as well as incentive plans and compensation matters and cross-border issues. Stephanie is Chair of the firm's Pension, Benefits and Executive Compensation practice group.*

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**Notice:** This material does not constitute legal advice. Readers are urged to consult their professional advisers prior to acting on the basis of material in this newsletter.

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