Coronavirus: Government Programs for Employer/Employee
April 21, 2020
Please contact relevant public health authorities for medical/public health advice. Neither BOMA Canada nor the individuals presenting herein are providing such advice.
Welcome from BOMA Canada

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Government Programs: Top Five Issues for Employers

Questions that are top of mind amid the COVID-19 Pandemic

Dan Palayew
Partner
BLG
Layoffs and Government Programs

1. To Layoff or Not to Layoff?
2. Provincial Leaves
3. Recall from Layoff
4. Interplay between EI, CERB and CEWS
5. What’s Next?
1. To Layoff or Not to Layoff?

What are the potential consequences of temporarily laying off my employees?

- Constructive Dismissal
1. To Layoff or Not to Layoff?

What are alternatives to laying off my employees?

- Use of accumulated sick days, personal days or vacation days
- The Work-Sharing Program
- SUB Plans
- The CEWS
- The CERB
- Additional Leaves
2. Provincial Leaves

**British Columbia**

- COVID-19 leave under the Employment Standards Act

**Alberta**

- Unpaid Leave of Absence for workers who are sick or quarantined due to COVID-19
- Unpaid Leave of Absence for workers caring for children or family members due to COVID-19

**Saskatchewan**

- Unpaid Leave of Absence for Public Health Emergency
2. Provincial Leaves

**Manitoba**

- Proposing new provisions to the Employment Standards Code that would allow employees to be away from work for specified reasons related to COVID-19
- Paid administrative leave for health-care staff

**Ontario**

- Infectious Disease Emergency Leave

**Newfoundland and Labrador**

- Communicable Disease Emergency Leave
3. Recall from Layoff

What happens if I recall my employees on a partial basis?

• Impact to CERB
• Impact to EI
• Again, watch out for Constructive dismissal
3. Recall from Layoff

What if I recall an employee and then temporarily lay them off again?

- Recalled employees must inform Service Canada of their recall
- If laid off again, new temporary layoff period begins
- Block 10 of ROE for second temporary layoff should be date of return to work
4. Interplay Between EI, CERB, and CEWS

What if my employees are on EI and I rehire them with assistance of the CEWS?

- Mutually exclusive
- EI claim should be cancelled if employee is rehired with aid of CEWS
4. Interplay Between EI, CERB, and CEWS

What if my employees are receiving CERB and I would like to rehire them with help from CEWS?

• Mutually exclusive benefits
4. Interplay Between EI, CERB, and CEWS

How do employees repay the CERB if they were not eligible?

- It depends how they received the payment
- Process for payments received by cheque
- Process for payments received by direct deposit
4. Interplay Between EI, CERB, and CEWS

How does CERB affect EI eligibility?

• Will not affect the benefit period
• Must reapply for EI after CERB period ends
5. What’s Next?

- Reopening the Economy – What does that look like?
- Safety Measures and Testing
- New Agreements and Old Agreements
COVID 19

Government Support Programs

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Senior Vice President, Tax Services
MNP LLP

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Manager, Public Affairs
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Unprecedented Challenges

Unknown Time Line

Unprecedented Response
Cash Preservation Measures Through Tax System

- Deferral of corporate and personal tax and instalment payments until Sept 1, 2020
- GST/HST Remittances deferred until June 30, 2020
- Request refunds of corporate instalments already made prior to March 18
- Property tax deferral
Canada Emergency Wage Subsidy (cews)
What is the CEWS?

• 75% wage subsidy for eligible entities retroactive to March 15, 2020
• Applies at a rate of 75 percent on the first $58,700 normally earned by employees – representing a maximum benefit of $847 per week
• In effect for 12-week period – March 15 to June 6, 2020
Who is Eligible for the CEWS?

**Eligible entity:**

- Includes individuals, taxable corporations, trusts, partnerships consisting of eligible employers, non-profit organizations and registered charities
- Excludes public bodies – crown corporations, universities, etc.

**Eligible employee:**

- An individual employed in Canada by an eligible entity who has not been without remuneration for 14 or more consecutive days in the qualifying period
CEWS – Qualifying Revenue

- Revenue from business carried on in Canada and earned from arm’s length sources
- Calculated using employer’s normal accounting method, excluding revenues from extraordinary items, amounts on account of capital and wage subsidy amounts received
- Employers can select accrual method or cash method for calculating revenue; that selection must be used for entire duration of program
- There are special rules for entities with 90 percent or more of their revenues from non-arm’s length parties
CEWS – Eligible Remuneration

**Includes:**

- Salary, wages or commissions
- Must be paid in respect of the week in the qualifying period
  - Paying a previously booked bonus is not eligible as expense was claimed in prior period (not in respect of qualifying period)
  - Paid between March 15, 2020 and June 6, 2020

**Does not include:**

- Dividends
- Severance pay
- Stock option benefits
CEWS – Eligible Remuneration

Also excluded:

• Any amount received that can reasonably be expected to be paid or returned to employer or non-arm’s length person (cannot loan funds back)

• Any amount paid if:
  • Amount exceeds baseline remuneration
  • After qualifying period, remuneration expected to fall below baseline remuneration
  • Paid to increase CEWS
  • Cannot temporarily bump remuneration to maximize CEWS
CEWS – Eligible Remuneration

Baseline Remuneration

• Average weekly eligible remuneration paid during the period of January 1, 2020 to March 15, 2020
  • Total remuneration for period / 10 weeks
  • May exclude any periods of time of at least 7 days when employee was not and will not be remunerated
• Must be paid by eligible entity to eligible employee
• For non-arm’s length employees, subsidy can never exceed 75% of baseline remuneration
  • If no wages paid prior to March 15, 2020, baseline remuneration = zero
CEWS - Overview of Program

<table>
<thead>
<tr>
<th>Qualifying Periods</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>March 15 to April 11</td>
<td>April 12 to May 9</td>
<td>May 10 to June 6</td>
</tr>
<tr>
<td>Wages During Period</td>
<td>Earned between March 15 through April 11</td>
<td>Earned between April 12 through May 9</td>
<td>Earned between May 10 through June 6</td>
</tr>
<tr>
<td>Revenue Period</td>
<td>March 2020 revenues</td>
<td>April 2020 revenues</td>
<td>May 2020 revenues</td>
</tr>
<tr>
<td>Prior reference period (default); or</td>
<td>March 2019 revenues</td>
<td>April 2019 revenues</td>
<td>May 2019 revenues</td>
</tr>
<tr>
<td>Prior reference period (alternative) Note 1</td>
<td>May elect to use average of January and February 2020 revenues as the prior reference period for all qualifying periods</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required decrease in revenues</td>
<td><strong>15%</strong> or greater</td>
<td><strong>30%</strong> or greater (deemed met if 15% or greater reduction in period 1)</td>
<td><strong>30%</strong> or greater (deemed met if 30% or greater reduction in period 2)</td>
</tr>
</tbody>
</table>

**Note 1** - Any entities that did not carry on business on March 1, 2019 must use January and February 2020 average revenues as the reference period.
# Subsidy Claim Amount per Employee

<table>
<thead>
<tr>
<th>ASSUMPTIONS:</th>
<th>Arm’s Length</th>
<th>Non-Arm’s Length</th>
<th>Arm’s Length</th>
<th>Non-Arm’s Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly baseline remuneration</td>
<td>2,000.00</td>
<td>2,000.00</td>
<td>700.00</td>
<td>700.00</td>
</tr>
<tr>
<td>Weekly current remuneration</td>
<td>800.00</td>
<td>800.00</td>
<td>1,200.00</td>
<td>1,200.00</td>
</tr>
<tr>
<td>GREATER OF:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Least of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- 75% of remuneration paid</td>
<td>600</td>
<td>600</td>
<td>900</td>
<td>900</td>
</tr>
<tr>
<td>- Max benefit</td>
<td>847</td>
<td>847</td>
<td>847</td>
<td>847</td>
</tr>
<tr>
<td>- NIL if Non-Arm's Length Employee</td>
<td>N/A</td>
<td>-</td>
<td>N/A</td>
<td>-</td>
</tr>
<tr>
<td>Least of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Eligible remuneration paid</td>
<td>800</td>
<td>800</td>
<td>1,200</td>
<td>1,200</td>
</tr>
<tr>
<td>- 75% of baseline remuneration</td>
<td>1,500</td>
<td>1,500</td>
<td>525</td>
<td>525</td>
</tr>
<tr>
<td>- Max benefit</td>
<td>847</td>
<td>847</td>
<td>847</td>
<td>847</td>
</tr>
<tr>
<td>Maximum Subsidy to Employer</td>
<td>800</td>
<td>800</td>
<td>847</td>
<td>525</td>
</tr>
<tr>
<td>Subsidy as a Percentage of Remuneration</td>
<td>100%</td>
<td>100%</td>
<td>71%</td>
<td>44%</td>
</tr>
</tbody>
</table>
CEWS – How to Apply / Maintaining Records

• Eligible entities would be able to apply for the CEWS through the Canada Revenue Agency’s My Business Account portal, as well as a web-based application.

• Employers are required to maintain records demonstrating their reduction in revenues and remuneration paid to employees – must attest to decline in revenue.
CEWS – Compliance

• Employers not meeting eligibility requirements will be required to repay amounts received under the CEWS – 100%
• Anti-abuse rules will be ensure that the subsidy is not inappropriately obtained
• Penalties may include fines, imprisonment
• Minister may make information relating to CEWS application public
Refund of Certain Payroll Contributions

- The Government is proposing a new 100 percent refund for certain employer paid contributions to EI, CPP and QPP and the Quebec Parental Insurance Plan.

- This refund is available on employer-paid contributions for eligible employees for each week throughout which those employees on leave with pay, and for those employees that the employer is eligible to claim the CEWS.
Interaction of CEWS With Other Programs

How does the CEWS interact with the 10 percent wage subsidy?

• For employers eligible for both the CEWS and the 10 percent wage subsidy for a period, any benefit from the 10 percent wage subsidy for remuneration paid in a specific period would generally reduce the amount available to be claimed under the CEWS in that same period.

How does the CEWS interact with the Canada Emergency Response Benefit (CERB)?

• Eligibility for the CEWS of an employee’s remuneration is available to employees other than those who have been without remuneration for 14 or more consecutive days in the eligibility period.
Temporary Wage Subsidy for Employers (tws)

• Employers that do not qualify for the CEWS may continue to qualify for previously announced temporary wage subsidy of 10 percent

Calculation of Subsidy

• Equal to 10 percent of renumeration paid between March 18, 2020 and June 19, 2020
• Maximum subsidy amount is $1,375 per employee to a maximum of $25,000 for employer
• Each corporation in an associated group could be permitted these amounts provided that the taxable capital of the associated group is below $15 million
• No reduction to the remittance of CPP and EI premiums
• CRA has confirmed that subsidy is taxable to corporation

Example

• 5 employees earning monthly salaries of $4,100 for total monthly payroll of $20,500
• Subsidy is $2,050 ($20,500 x 10%) per month
• Over designated three-month period, total subsidy received would be $6,150
Canada Emergency Response Benefit (CERB)

• Temporary income support to workers who have stopped working and are without employment or self-employment income for reasons related to COVID-19
  • To be eligible, workers must have earned at least $5,000 from employment /self employment in 2019 or in the 12 month period ending at time of application
  • Workers can earn up to $1,000 per month and remain eligible for CERB
• The benefit is temporary in nature and is paid in blocks of four weeks for a total of $2,000 per month or equivalent to $500 per week; maximum 16 weeks of benefits can be paid
• The benefit is available from March 15, 2020 to October 3, 2020
• The applicant must apply before December 2, 2020; online application process requires minimal paperwork
Canada Emergency Response Benefit (CERB)

- Employee or self-employed individual ceased working due to COVID-19 for at least 14 consecutive days within a 4-week period in which they apply for payment.

- Individual does not receive >$1,000 income from employment or self-employment, EI benefits or allowances under a provincial maternity or parental plan, or any other income as prescribed by regulation.
Canada Emergency Response Benefit (CERB)

• CERB extended to seasonal workers who have exhausted regular benefits and are unable to undertake usual seasonal work as a result of COVID-19

• CERB also extended to workers who recently exhausted EI regular benefits and are unable to find a job or return to work because of COVID-19
CERB - (FAQs)

Is the CERB amount taxable?
• Amount is taxable to the individual and CRA indicated tax will not be deducted at source

Can I have other income while receiving the CERB?
• Individual must have stopped working as a result of COVID-19 and be without employment income for at least 14 consecutive days within initial four-week period; for subsequent periods, individual must expect to have no employment income, self-employment income or EI benefits

When will payment be received?
• Benefits will start within a few days of individual submitting the application; payments will be retroactive to individual’s eligibility date

I am currently on EI, do I qualify for this program?
• If individual eligible for EI benefits that started before March 15, 2020 and benefits end before October 3, 2020, individual may apply for the CERB if eligibility requirements met
Other Programs -
Canada Emergency Business Account (CEBA)

• Interest free loans of up to $40,000 to small businesses and not for profit entities
• Required to have payroll in 2019 of at least $20,000 and not more than $1,500,000
• Loan repayable on or before December 31, 2022 – eligible for 25% forgiveness (maximum $10,000)
• Loan subject to 5% interest rate after December 31, 2022
• Funds must be used for operating expenditures, not eligible for management remuneration, dividends, prepayment of existing debts

Apply for CEBA at financial institution of business
Other Programs -
Canada Emergency Commercial Rent Assistance (CECRA)

• Creation of rental assistance program for small business that will provide loans, or forgivable loans, to commercial property owners who forgo rent for small business tenants

• Period covered – April (retroactive), May and June 2020
Other Programs - Alternatives for Retaining Employees

Work share agreements
- Allows eligible employees to receive EI on a reduced work schedule
- Extension of program from 38 weeks to 76 weeks
- Businesses can enter the program after 1st year of operations

Supplementary Unemployment Benefit Plan
- Allows employer to top-up employee without clawing back EI benefits
Tax Planning During an Economic Slowdown

- Payment of tax-free capital dividends – Capital Dividend Account
- Triggering capital losses on investments (selling investments)
- Transfer of property from corporation to individual shareholder
- Asset protection planning
- Estate freeze
- Thaw / refreeze transaction
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