

COVID-19 UPDATE – MARCH 25, 2020

By Maggie Campbell, Andrew Nicholl, Meaghan McWhinnie and Brandon Hillis

This morning, the first wave of federal proposed COVID-19 legislation, [*An Act respecting certain measures in response to COVID-19*](#) (the “**COVID-19 Act**”) was [passed by the Senate and received Royal Assent](#). This omnibus legislation provides for a number of legislative changes that will impact employers and employees. The focus of this bulletin, however, is solely on the establishment of the new Canada Emergency Response Benefit (“**CERB**”) which, as announced by the Prime Minister and the Finance Minister in press conferences this morning [replaces the previously announced plans to provide the Emergency Care Benefit and Emergency Support Benefit](#) which were addressed in our [previous update](#).

The Federal Government further stated, in its [News Release](#) (the “**News Release**”) announcing the CERB, that this taxable benefit will provide \$2,000 a month for up to four months for workers who lose their income as a result of the COVID-19 pandemic.

The News Release acknowledges that the “EI system was not designed to process the unprecedented high volume of applications” it is receiving. The elimination of the previously announced Emergency Care Benefit and Emergency Support Benefit, and the creation of the CERB, seems to be in response to this problem. The CERB program appears to be designed to provide fast access to income relief for employees out of work as a result of COVID, and to provide coverage for workers who would not have qualified for EI.

While further details are certainly still to come as to the administration of the CERB as well as its interaction with other programs (such as Supplemental Unemployment Benefits (“SUB”) Plans and the Work-Sharing Program), given the urgency of this situation, and the significance of the CERB, we are sharing with you the information that we have available to us at this stage.

Eligibility

Under the CERB, “worker” is defined as an individual who in the past year (for 2019 or in the 12-month period preceding the day on which they make an application for CERB) had total income (from employment, self-employment, benefits and allowances under a provincial plan because of pregnancy or in respect of the care by the person of one or more of new-born or adopted children) of at least \$5,000.

For the purposes of the CERB, workers (whether employed or self-employed) will be eligible if:

- they cease working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and
- they do not receive during the 14 day period:
 - income from employment or self-employment (subject to the regulations);

- benefits, as defined in subsection 2(1) of the *Employment Insurance Act*,
- allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or
- any other income that is prescribed by regulation.

A worker who quits voluntarily will not be eligible for the CERB.

With respect to what is meant by “cease working for reasons related to COVID-19” and other nuances in the language of the part of the COVID-19 Act dealing with the CERB, the News Release and the Department of Finance’s Economic Response Plan [webpage](#) identifies the following persons as being covered:

- Workers who must stop working due to COVID19 and do not have access to paid leave or other income support.
- Workers who have lost their job, are sick, quarantined, or taking care of someone who is sick with COVID-19, as well as working parents who must stay home without pay to care for children who are sick or at home because of school and daycare closures.
- Wage earners, as well as contract workers and self-employed individuals who would not otherwise be eligible for Employment Insurance (EI).
- Workers who are still employed, but are not receiving income because of disruptions to their work situation due to COVID-19. The News Release states that “[t]his would help businesses keep their employees as they navigate these difficult times, while ensuring they preserve the ability to quickly resume operations as soon as it becomes possible.”

As noted above, this is a developing situation and we expect additional details and clarifications soon. We also note that the News Release is not part of the proposed legislation but it provides some idea of what the Federal Government is trying to achieve with this CERB.

When, How & How Much?

Workers will be able to apply for the CERB for any four-week period falling within the period beginning on March 15, 2020 and ending on October 3, 2020. No worker will be permitted to file an application after December 2, 2020. The News Release provided the following additional details:

- The portal for accessing the CERB will be available in early April. The Finance Minister identified April 6, 2020 as the goal in his press conference this morning.
- Canadians will begin to receive their CERB payments within 10 days of application.
- The CERB will be paid every four weeks and be available from March 15, 2020 until October 3, 2020.



With respect to the reference above that this benefit will cover workers “who are still employed, but are not receiving income because of disruptions to their work due to COVID-19”, we encourage you to contact us to clarify what this means for your business.

The maximum number of weeks for which income support payments may be made to a worker is 16 weeks or, if another number of weeks is fixed by regulation, that number of weeks.

As mentioned, in this morning’s News Release, on the Department of Finance’s Economic Response Plan webpage, and during this morning’s press conference, the government indicated that CERB will provide eligible workers with “\$2,000 a month”. However, the legislation provides that with the consent of the Minister of Finance, the Minister Employment and Social Development may, by regulation, fix the amount of an income support payment for a week specified in the regulation and that such regulations may distinguish among different classes of workers.

What about EI?

With respect to the interaction between EI and the new CERB regime, the News Release provides:

Canadians who are already receiving EI regular and sickness benefits as of today would continue to receive their benefits and should not apply to the CERB. If their EI benefits end before October 3, 2020, they could apply for the CERB once their EI benefits cease, if they are unable to return to work due to COVID-19. Canadians who have already applied for EI and whose application has not yet been processed would not need to reapply. Canadians who are eligible for EI regular and sickness benefits would still be able to access their normal EI benefits, if still unemployed, after the 16-week period covered by the CERB.

We will update you as more information becomes available.

Navigating COVID-19 in the Workplace

As with all of our previous COVID-19 updates, we caution that the pandemic and the responses of federal and provincial governments continue to evolve by the day and by the hour. We recognize that the guidance being provided by government authorities (and law firms) can be overwhelming. If you have any questions about any of these programs, or any questions at all about how your workplace should be addressing the COVID-19 pandemic, please do not hesitate to [contact us](#).

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