

## COVID-19 BULLETIN – APRIL 8, 2020

By Jennifer Devins and Tamara Navaratnam

### **Federal Response to COVID-19**

#### **Canada Emergency Wage Subsidy**

In our [April 1, 2020 bulletin](#), we reviewed the federal government's Canada Emergency Wage Subsidy (CEWS).

Finance Minister Bill Morneau announced today, April 8, 2020, that the proposed eligibility criteria for the wage subsidy program have been changed and updated in order to cover more businesses and employees. The cost of the revised program is estimated to be \$73-billion dollars.

The proposed new details are set out in the [April 8, 2020 News Release](#) and on the Department of Finance's [website](#), and include the following:

- For March, the Government proposes to make the CEWS more accessible than originally announced by reducing the 30% revenue reduction benchmark to 15%. For April and May, the revenue reduction test will continue to be a 30% decline in revenues.
- To measure their revenue losses, the Government proposes that all employers have the flexibility to compare their revenue of March, April and May 2020 to that of the same month of 2019, or to an average of their revenue earned in January and February 2020.
- The Government proposes that employers be allowed to measure revenues either on the basis of accrual accounting (as they are earned) or cash accounting (as they are received). Special rules would also be provided to address issues for corporate groups, non-arm's length entities and joint ventures.
- The Government proposes that charities and non-profit organizations be allowed to choose to include or exclude government funding in their revenues for the purpose of applying the revenue reduction test.
- In order to simplify the process for rehiring employees, the Government is proposing that employers eligible for the CEWS be entitled to receive a 100% refund for certain employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan.
- Businesses that apply for the wage subsidy will need to designate a person responsible for the subsidy to ensure their claim is appropriate.

- Employers would be required to repay amounts paid under the CEWS if they are later determined to not meet the eligibility requirements.
- There will be strict penalties for companies that abuse the wage subsidy program. Minister Morneau announced that businesses who abuse the program could face fines up to 225% of the amount they received and up to 5 years in prison. We note, however, that the website presently only notes fines and imprisonment, including a penalty equal to 25% of the value of the subsidy claimed, in addition to the requirement to repay in full the subsidy that was improperly claimed.

As a reminder, as set out in our [April 1, 2020 bulletin](#), the following proposed terms remain:

- The program would be in place for a 12-week period, from March 15 to June 6, 2020.
- A business must apply for the subsidy each month.
- Employers are expected to make their best effort to top-up employees' salaries to bring them to pre-crisis levels. We highlight that employers who pay only 75% of wages may risk a constructive dismissal or breach of contract claim. We encourage you to contact us should you require advice on this issue.
- The proposed CEWS would apply at a rate of 75% of the first \$58,700 normally earned by employees – representing a benefit of up to \$847 per week, per employee. The pre-crisis remuneration for a given employee would be based on the average weekly remuneration paid between January 1 and March 15, 2020 inclusively, excluding any seven-day periods in respect of which the employee did not receive remuneration.

The proposed program still needs to be approved in Parliament. The Government hopes that the program will be in place in the next 3-6 weeks.

#### *Interaction with 10% Wage Subsidy*

On March 25, 2020, the *COVID-19 Emergency Response Act*, which included the implementation of a temporary 10% wage subsidy, received Royal Assent. That program continues to exist.

For employers that are eligible for both the CEWS and the 10% wage subsidy for a period, any benefit from the 10% 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.



### Canada Summer Jobs Program

The Prime Minister announced the following temporary changes to the Canada Summer Jobs Program:

- an increase to the existing wage subsidy, so that private and public sector employers can also receive up to 100% of the provincial or territorial minimum hourly wage for each employee
- an extension to the end date for employment to February 28, 2021
- allowing employers to adapt their projects and job activities to support essential services
- allowing employers to hire staff on a part-time basis

This wage subsidy is separate from the CEWS.

Further details can be found in the Prime Minister's [News Release](#).

### Canada Emergency Business Account

In our [March 27, 2020, bulletin](#), we provided an overview of the Canada Emergency Business Account, which will provide interest-free loans of up to \$40,000 to small businesses and not-for-profits, to help cover their operating costs during a period where their revenues have been temporarily reduced.

Minister Morneau announced today that the application process for businesses will be available tomorrow, April 9, 2020, through small and large banks.

### **Provincial Response to COVID-19**

#### New Guidance from the BC Employment Standards Branch

In our [March 24, 2020, bulletin](#), we provided an overview of legislative amendments that BC has made to employment standards legislation in response to COVID-19.

The Employment Standards Branch recently revised a number of its interpretation guidelines with respect to the application of the *Employment Standards Act*. Of note, the Employment Standards Branch recognizes that the COVID-19 pandemic could be considered an “unforeseeable event” for the purposes of individual and group terminations under the ESA.

Under section 65(1)(d) of the *Employment Standards Act*, compensation for length of service on termination (section 63) and group termination pay (section 64) do not apply if the employment contract is impossible to perform as a result of an unforeseeable event or circumstance.



The Branch's new guidance with respect to terminations in light of COVID-19 states as follows:

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Many business closures or staffing reductions that are due to the current COVID-19 pandemic could be seen as resulting from unforeseeable events that make an employee's work impossible to perform. If the closure/reduction is directly related to COVID-19 and there is no way for the employee to perform work in a different way (for example, working from home) the exception may apply to exclude employees from receiving compensation for length of service and group termination pay. However, this may not always be the case.

If an employer terminates an employee for reasons that are not directly related to COVID-19, or if the employee's work could still be done (perhaps in a different way) this exemption would not apply. These situations will be dealt with on a case-by-case basis.

#### New Requirement for a Self-Isolation Plan

Today, Premier John Horgan announced that all international travelers returning to BC are required by law to not only self-isolate for 14 days, but also complete a self-isolation plan. The requirement for a self-isolation plan comes into effect immediately.

Self-isolation plans must be reviewed by provincial government officials before travelers can return home. The document can be submitted online or completed in person on arrival. Further information on this requirement can be found [here](#).

#### Navigating COVID-19 in the Workplace

For further information relating to the COVID-19 pandemic and how it may impact your workplace, please look to our previous bulletins, which can be found on [Roper Greyell's COVID-19 resource page](#).

This memorandum is current to the afternoon of April 8, 2020, but the pandemic and the responses of federal and provincial governments continue to evolve, and this may impact the accuracy of the information in this bulletin. If in doubt about whether anything in this document is still current, please do not hesitate to [contact us](#).

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