



## **April 11, 2020**

The House of Commons was recalled today to pass the *COVID-19 Emergency Response Act, No. 2*. This Act approved the Canada Emergency Wage Subsidy that the government had proposed with some changes.

### **Eligible Employer**

An eligible employer includes individuals, taxable corporations, partnerships consisting of eligible employers, non-profit organizations and registered charities.

Public bodies would not be eligible for the subsidy. This would generally include municipalities and local governments, Crown corporations, wholly owned municipal corporations, public universities, colleges, schools and hospitals.

The subsidy is available to eligible employers that see a drop of at least 15% of the revenue in March 2020 and 30% for April and May.

The individual with principle responsibility for the financial affairs of the employer will be required to attached to the client in revenue.

The entity must have had a payroll number with the Canada Revenue Agency on March 15, 2020 to be a qualifying entity.

### **Eligible Employee**

An eligible employee of an eligible employer means an individual employed in Canada, other than an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the qualifying period.

This is a change to the definition of eligible employee. It replaces the previous announced restriction that employer would not be eligible to claim to CEWS for remuneration paid to an employee in a week that falls within a four-week period for which the employee is eligible for the Canadian Emergency Response Benefit.

### **Pre-crisis Remuneration**

Pre-crisis remuneration of an eligible employee means the average weekly eligible remuneration paid to the employee by the employer during the period January 1 to March 15, 2020. Any period of seven or

more consecutive days for which the employee was not remunerated can be excluded from the calculation of the average.

### **Eligible Remuneration**

Eligible remuneration includes salary, wages or other remuneration including fees, commissions or other amounts for services of the eligible employee. It does not include stock option benefits, any amounts that can reasonably be expected to be paid or returned to the employer (or a related person). Eligible remuneration will not include any amount over the employee's baseline remuneration if it is part of an arrangement whereby after the qualifying period the eligible employee is reasonably expected to be paid a lower weekly amount.

### **Qualifying Revenue**

Employers revenue would be its revenue in Canada earned from arms length sources. Revenue would be calculated using normal accounting methods and excludes ordinary items. Employers can calculate the revenues under the accrual method or the cash method , but not a combination of both. Employers with select an accounting method when first applying for the CEWS and would be required to use that method for the entire duration of the program.

Where a group of eligible entities normally prepare consolidated financial statements, each member of the group may determine its qualifying revenue separately, provided every member of the group determine its qualifying revenue on that basis. However, where each member of an affiliated group jointly elect, the qualifying revenue of the group may be determined on a consolidated basis in accordance with relevant accounting principles.

If an eligible entity's qualifying revenue is all or substantially all (more than 90%) from one or more related persons or partnerships and each particular person or partnership jointly elects with the eligible entity the entity is subject to a special calculation to determine its eligibility. Essentially the eligible entity prorates its revenue from each particular person by that particular person's declined in arms' length revenue.

### **Amount of the Subsidy**

The subsidy is calculated for each employee on eligible remuneration paid between March 15 and June 6, 2020. It is the greater of:

- 75 per cent of the amount of remuneration paid, up to a maximum of \$847 per week; and
- The amount of remuneration paid, up to a maximum benefit of \$847 per week or 75 per cent of the employee's pre-crisis weekly remuneration, whichever is less.

This means that employers may be eligible for a subsidy of up to 100 per cent of the first 75 per cent of pre-crisis wages and salaries of existing employees.

Employees that do not deal at arms length with the employer are eligible for the subsidy. However, the subsidy amount for these employees will be limited to the eligible remuneration paid up to a maximum benefit of the lesser of \$847 per week and 75% of the employees pre crisis weekly remuneration. The subsidy would only be available in respect of non arms' length employees employed prior to March 15, 2020.

## Eligible Periods

An employer's eligibility is generally determined by the change in the eligible employer's monthly revenues, year over year, for the calendar month in which the period began. Employers can elect an alternative method and compare their monthly revenues to their average revenues for January and February 2020. Employers must select the general approach or the alternative approach when first applying for the CEWS and must use that approach for the entire duration of the program.

To provide greater certainty to employers, once an employer is found eligible for a specific period, the employer would automatically qualify for the next period.

This table outlines each claiming period and the month in which a decline in revenue would be required to qualify for the subsidy.

|                 | Claiming period     | Required reduction in revenue | Reference period for eligibility  |
|-----------------|---------------------|-------------------------------|---|
| <b>Period 1</b> | March 15 – April 11 | 15%                           | March 2020 over: <ul style="list-style-type: none"><li>• March 2019 or</li><li>• Average of January and February 2020</li></ul> |
| <b>Period 2</b> | April 12 – May 9    | 30%                           | April 2020 over: <ul style="list-style-type: none"><li>• April 2019 or</li><li>• Average of January and February 2020</li></ul> |
| <b>Period 3</b> | May 10 – June 6     | 30%                           | May 2020 over: <ul style="list-style-type: none"><li>• May 2019 or</li><li>• Average of January and February 2020</li></ul>     |

## Refund for Certain Payroll Contributions

In addition to the CEWS, Employers are entitled to a 100% refund of employer paid contributions to employment insurance, the Canada Pension Plan, the Québec pension plan, and the Québec parental insurance plan. This refund covers 100% of these amounts for each week throughout which an employee is on leave with pay and for which the employer is eligible to claim the CEWS for that employee.

An employee will be considered to be on leave with pay throughout a week in which that employee receives remuneration but does not perform any work for the employer. The refund does not apply where an employee is on leave with pay for only a portion of week. The refund is not subject to the weekly maximum benefit per employee of \$847.

Employers are required to continue to collect and remit employer and employee contributions for each of the programs. These amounts would be remitted to the Canada Revenue Agency in the normal course.

## Ensuring Compliance

Employers will have to keep records demonstrating their eligibility to claim the CEWS and the remuneration paid to employees. Eligible employers will apply for the CEWS through the Canada Revenue Agency's *My Business Account* portal. Employers can also use a web-based application if they do not have a My Business Account.

Where it is determined that employer does not meet the eligibility requirements for the CEWS it will be required to repay amounts received under the program. Employers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS will be subject to 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.

## Interaction with Other Programs

Eligible employers may also qualify to claim the temporary 10% wage subsidy that previously received Royal Assent. Employers that are eligible for both must reduce the wages for the CEWS by the 10% wage subsidy claimed.

For employers and employees that are participating in a Work-Sharing program, EI benefits received by employees through that program will reduce the benefit that their employer is entitled to receive under the CEWS.

## Government Assistance

The wage subsidy received by an employer would be considered government assistance and be included in the employer's taxable income in the year in which it is received.

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