

Updates on the Canada Emergency Wage Subsidy

The Government of Canada has released details on its Canada Emergency Wage Subsidy (“CEWS”). CEWS is a 75% wage subsidy being offered to all businesses that have lost 30% of their revenue as a result of the coronavirus pandemic.

Note that the legislative measures to fund and have CEWS take effect have not been finalized. The government is expected to call an emergency session of Parliament to vote on and pass the necessary provisions for CEWS.

What is CEWS?

CEWS is a wage subsidy provided to eligible employers to assist them in addressing the impacts of the coronavirus pandemic. The federal government will provide a 75% wage subsidy to all businesses that have lost 30% of their revenues as a result of COVID-19. This subsidy will cover annual earnings up to \$58,700. The maximum subsidy for each employee would be \$847 a week. Amounts provided under CEWS are expected to go directly to employees. As discussed below, attempts to use the funds for other purposes will attract sanctions.

The CEWS will be in effect for three months and is retroactive to March 15, 2020. Companies will have to certify every month that their revenues are 30% less in that month than they were in the same month the year before. For example, companies must show that their revenues in March 2020 were 30% less than their revenues in March 2019. Qualifications for the subsidy are discussed below.

There is no strict requirement that employers top up the subsidy received from the CEWS. In other words, an employer can choose to simply pay employees 75% of their salary and still qualify for the subsidy. (Note that this does not protect against risks of a constructive dismissal claim.) However, the government is encouraging employers to provide whatever top ups they can and may require employers to attest that they are doing “everything they can” to pay the remaining 25% of employee wages.

Which employers are eligible for CEWS?

Employers eligible for CEWS include individuals, taxable corporations, and partnerships, as well as non-profit organizations and registered charities.

Canadian subsidiaries of foreign-controlled companies are also eligible.

Public bodies are not eligible for CEWS. Public bodies include municipalities and local governments, Crown corporations, public universities, colleges, schools, and hospitals.

How do employers qualify for CEWS?

To access CEWS, an eligible employer must demonstrate that their revenues have dropped by 30% because of COVID-19. As noted above, this is done by showing a 30% difference in revenues between March 2019 and March 2020, and subsequently in the months of April and May.

An employer's revenue for this purpose is the revenue from its business carried on in Canada, earned from arms-length sources. Revenue should be calculated using the employer's "normal accounting methods". The revenue does not include revenues from extraordinary items and amounts gained or lost on account of capital. For non-profits and charities, the government has stated that it "will continue to work with the sector to ensure the definition of revenue is appropriate to their specific circumstances."

The CBC is reporting that "a senior government official, speaking to reporters at a technical briefing on a not-for-attribution basis", said there may be some "flexibility" on the revenue comparisons to address the needs of companies that were not actually operating in March 2019.

How do employers apply?

CRA will administer the CEWS through the "My Business Account Portal" on the CRA website.

The government has requested that all businesses register for direct deposit to ensure that money can be sent electronically to avoid further delay.

Money is expected to start flowing within the next three to six weeks, depending on how quickly the government can make the necessary changes to the necessary administration systems.

What are the penalties for abusing the CEWS?

Though there are few details at this time, the government has repeatedly said that it will be actively monitoring CEWS for abuse by employers. There are some reports that the government is considering criminal offences for individuals, employers, or business administrators falsifying information to obtain access to the CEWS or misusing CEWS funds.

What happens to the previously announced 10% wage subsidy?

CEWS does not replace the federal government's previous 10% wage subsidy for small businesses, charities, and non-profit organizations. The 10% subsidy is accessible to

eligible employers even if they have not experienced a drop in revenues. The maximum subsidy for the 10% program remains \$1,375 per employee and \$25,000 per employer.

If a business qualifies for both the 10% subsidy and CEWS, it can receive both benefits. In these cases, however, funding provided through CEWS will be adjusted and offset by amounts received through the 10% wage subsidy program.

What do I tell employees about the government's Canada Emergency Relief Benefit ("CERB")?

Employees receiving wages through CEWS will not be eligible for CERB payments.

CERB is only available to employees who are not receiving any income due to COVID-19. Through CEWS employees of eligible employers will be earning at least 75% of their pre-crisis wages and will therefore be ineligible for CERB.

The CERB program is expected to be open for applications on April 6, 2020 through Service Canada.

Though the government has now provided details about the CEWS, these are unprecedented times and CEWS is a new initiative. Many questions will remain unanswered until the program becomes active. We will continue to monitor the program.

This publication is intended only to provide general information. It should not be relied on as legal advice. For specific legal advice, please contact: [Leslie Dizgun](#), [Allyson Fischer](#), [Lorne Honickman](#), [Justin Anisman](#), or [William McLennan](#).