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— BT LEGAL —

In recent weeks, Ontario and Canada have taken further action to help employers and employees cope with the ongoing impacts of the COVID-19 pandemic. In this post, we summarize two major changes of note that will affect most employers and employees in Ontario during the coming months:

- Ontario's extended suspension of pandemic-related constructive dismissals and deemed terminations under the *Employment Standards Act, 2000*
- Canada's alternative employment insurance initiatives to support Canadians after the end of the Canada Emergency Recovery Benefit

This publication is intended only to provide general information. It should not be relied on as legal advice. Employers and employees facing specific circumstances should consult their legal counsel for specific advice. For specific legal advice, please contact: [Leslie Dizgun](#), [Allyson Fischer](#), [Mitchell Smith](#), [Justin Anisman](#), [William McLennan](#), or [Alyssa Jagt](#).

Ontario extends the suspension of pandemic-related constructive dismissals and deemed terminations under the *Employment Standards Act, 2000* until January 2021.

We [previously reported](#) that the Government of Ontario was amending and suspending various aspects of Ontario's *Employment Standards Act, 2000* ("ESA").

The changes introduced, among other things, a new statutory leave of absence called the Infectious Disease Emergency Leave ("IDEL"). If an employee had their hours or wages reduced for reasons related to the coronavirus after March 1, 2020, then that employee is deemed to be on an IDEL, and not constructively dismissed or on a temporary layoff. As a result, employers are not required to provide notice or severance pay under the ESA to employees who were laid off because of the coronavirus.

These amendments were set to expire on September 4, 2020, which was six weeks after the end of Ontario's declared state of emergency. The government, however, has extended the amendments so they will last until January 2, 2021. This means that employees who have been laid off or suffered a reduction in wages or hours of work due to the coronavirus may expect them to continue until January 2, 2021. Of course, employers are free to recall employees earlier than that date.

Unless there are further changes or amendments, come January 3, 2021, the regular rules around constructive dismissals and temporary layoffs will resume. At that point, employees who experience decreased wages or hours of work can claim constructive dismissal and termination pay under the ESA.

Readers should note that there is controversy about whether the original changes and this recent extension affect if an employer owes their employees notice of termination, termination pay, and/or severance pay at common law, which operates separately from the ESA. This question has not been decided and therefore introduces elements of risk for both employers and employees.

Canada ends the Canada Emergency Recovery Benefit (“CERB”), but introduces new employment insurance initiatives to support Canadians during the pandemic.

The CERB will end on September 26, 2020. To continue supporting out-of-work Canadians during the pandemic, the government is updating the existing employment insurance program (“EI”) and introducing a number of new programs to supplement EI.

Changes to Employment Insurance

Effective September 27, 2020, the minimum weekly taxable benefit for EI will be set at \$400. The weekly rate for extended parental benefits will be \$240. These regular benefits will be available for a minimum of 26 weeks. EI insurance premium rates will be frozen for two years.

To address issues arising from the pandemic, the EI benefits of those living in regions with an unemployment rate lower than 13.1% will have their EI benefits calculated on the basis of a rate of 13.1%.

Further, the program will award applicants a one-time credit of hours towards their insurable hour minimums:

- If a person claims regular or work-sharing benefits with 120 or more hours of insurable work, they will receive a temporary, one-time credit of 300 insurable hours.
- If a person claims other EI benefits, they will receive a temporary, one-time credit of 480 insurable hours.

Changes to pandemic response recovery benefits

Also effective September 27, 2020, the government will introduce three new recovery benefits:

1. The Canada Recovery Benefit (“CRB”)

The CRB will provide a weekly benefit of \$400, for up to 26 weeks.

It is available to eligible self-employed workers or workers who are not eligible for EI but still require income support and are available to, and looking for, work.

To be eligible, applicants must:

- reside in Canada;
- be at least 15 years old;
- have a valid Social Insurance Number;
- have stopped working due to the COVID-19 pandemic and be available and looking for work; or be working but have had a reduction in their employment/self-employment income for reasons related to COVID-19;
- be ineligible for EI;
- have had employment and/or self-employment income of at least \$5,000 in 2019 or in 2020; and
- have not quit their job voluntarily

Workers would apply after every two-week period for which they are seeking income support and attest that they continue to meet the requirements. In order to continue to be eligible for the benefit the claimant would need to look for and accept work when it is reasonable to do so. The benefit is taxable.

2. The Canada Recovery Sickness Benefit (“CRSB”)

For one year, the CRSB will provide a weekly benefit of \$500, for up to two weeks, to workers who are sick or must self-isolate for reasons related to COVID-19.

The benefit would be available to residents in Canada who:

- are at least 15 years of age and have a valid Social Insurance Number;
- are workers employed or self-employed at the time of the application;
- earned at least \$5,000 in 2019 or in 2020;
- have missed a minimum of 60% of their scheduled work in the week for which they claim the benefit; and
- have not received other paid sick leave for the same benefit period.

Applicants would not be required to have a medical certificate to qualify for the benefit. They would need to apply after the one-week period in which they are seeking income support and attest that they meet the requirements. The benefit is taxable.

3. The Canada Recovery Caregiving Benefit (CRCB)

For one year, the CRCB will provide a weekly benefit of \$500, for up to 26 weeks per household.

The benefit would be available to workers who have been unable to work for at least 60% of their normally scheduled work within a given week because they must:

(a) take care of a child under 12 years of age on the first day of the period for which the benefit is claimed; or

(b) provide care to a dependent or a family member with a disability

because:

- the school or daycare of the child, or the day program or care facility of the dependent or family member with a disability, is closed or operates under an alternative schedule for reasons related to the COVID-19 pandemic;
- the child cannot attend school or daycare, or the dependent or family member with a disability cannot attend their day program or care facility, under the advice of a medical professional due to being at high risk if they contract COVID-19; or
- the caregiver who usually provides care to the child, dependent, or family member with a disability is not available for reasons related to the COVID-19 pandemic.

In addition, to be eligible, applicants must:

- reside in Canada;
- be at least 15 years of age on the first day of the period for which they apply for the benefit;
- have a valid Social Insurance Number;
- be employed or self-employed on the day immediately preceding the period for which the application is made;

- have earned at least \$5,000 in 2019 or in 2020;
- not be in receipt of paid leave from an employer in respect of the same week; and
- not be in receipt of the CERB, the EI Emergency Response Benefit, the CRB, the CRBS, short-term disability benefits, workers' compensation benefits, or any EI benefits or Quebec Parental Insurance Plan benefits in respect of the same week.

Applicants would apply after the period in which they are seeking income support and attest that they meet the requirements. Two members residing in the same household could not be in receipt of the benefit for the same period. The benefit is taxable.