

Updates and Revisions to the Canada Emergency Wage Subsidy

On April 11, 2020, Parliament debated and passed into law the *COVID-19 Emergency Response Act, No. 2*, which implements the federal government’s Canada Emergency Wage Subsidy (“CEWS”). The CEWS that ultimately passed was different than that announced by the federal government on March 27, 2020.

- The government’s primer on the finalized CEWS can be found [here](#).
- Our discussion of the original CEWS can be found [here](#).

The following are some of the key aspects of the finalized CEWS:

- **Only a 15% decline in revenue required for March 2020.** Business may be eligible if they experienced a 15% decline in revenue in March 2020, rather than 30% for April and May, to reflect the timing of the pandemic.
- **There are now two methods for comparing revenue for the purposes of eligibility.** Employers may now choose between two comparison methods to calculate their decline in revenue in March, April, and May 2020. Employers must choose only one comparison method and use it for every CEWS application:
 - A year-to-year comparison of revenues between the months in questions, for example March 2019 and March 2020.
 - A comparison of revenue in March, April, or May 2020 versus the average revenue earned by the business in January and February 2020.

| Eligibility Period | Claiming Period | Required Reduction in Revenue | Reference Period for Eligibility |
|--------------------|----------------------|-------------------------------|---|
| Period 1 | March 15 to April 11 | 15% | March 2020 over: <ul style="list-style-type: none"> ● March 2019; or ● Average of January and February 2020 |

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|-----------------|----------------------|-----|--------------------------|-----------|--|
| Period 2 | April 12 to May 9 | 30% | Eligible for Period 1 | OR | April 2020 over: <ul style="list-style-type: none"> • April 2019; or • Average of January and February 2020 |
| Period 3 | May 10 to June 6 | 30% | Eligible for Period 2 | OR | May 2020 over: <ul style="list-style-type: none"> • May 2019; or • Average of January and February 2020 |

- **Revenues may be calculated by the “accrual method” or the “cash method”, but not both.** To calculate revenues for the applicable months set out above, employers may use either the accrual method (billed but unpaid amounts) or, if it is more favourable, the cash method (bill and paid amounts), but not both.
 - Employer may not combine the two methods.
 - The method chosen by the employer for the initial application must be used for the duration of the CEWS period.
 - “Revenue” includes cash, receivables, or other consideration arising in the course of ordinary activities in Canada, generally from the sale of goods, the rendering of services, and the use by others of the eligible employer’s resources.
 - “Revenue” does not include extraordinary items, amounts derived from persons or partnerships not dealing at arm’s length with the employer, and any amounts paid out to the employer under the subsidy.
 - To address situations where employees are employed by related businesses in one corporate group, if all or substantially all of an employer’s applicable revenue comes from a non-arm’s length person or partnership, the businesses may jointly elect and receive the subsidy if the non-arm’s length business experiences a reduction in revenues according to the appropriate criteria.

- **Amount of benefit per employee remains unchanged.** Employers may be eligible for a subsidy of up to 100% of the first 75% of an employee’s pre-crisis remuneration, as described below. The subsidy amount for a given employee between March 15 and June 6, 2020 is **the greater of:**

- 75% of the amount of remuneration paid to the employee in that week, up to a maximum benefit of \$847 for the week; **and**
- **the lesser of:**
 - the amount of remuneration paid to the employee in that week, up to a maximum benefit of \$847 for the week; **and**
 - 75% of the employee's pre-crisis remuneration, defined below.
- **“Pre-crisis remuneration” defined.** Pre-crisis remuneration as mentioned above is the average of the employee’s weekly remuneration from January 1 to March 15, 2020, excluding any seven-day periods where the employee did not receive any remuneration.
- **10% wage subsidy amounts reduce CEWS payments.** If an employer qualifies for and is receiving amounts from the government’s parallel 10% wage subsidy program, the amounts received under the CEWS will be reduced.
- **Work-sharing Employment Insurance amounts reduce CEWS payments.** If employees are receiving Employment Insurance benefits through a work-sharing program approved by the government, those amounts will reduce the amount to which they are entitled under the CEWS.
- **Employers may claim a refund for EI, CPP, QPP, and QPIP.** For some employees, employers may claim a 100% refund for employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan:
 - This refund is not subject to the weekly maximum benefit per employee that can be claimed under the CEWS.
 - There is no overall limit on the refund amount that an eligible employer may claim.
 - Employers are required to continue collecting and remitting employer and employee contributions to each program.
 - Eligible employers apply for the refund at the same time they apply for the CEWS.

- The refund applies to contributions made on behalf of employees who:
 - are on leave with pay due to COVID-19;
 - are not working at all in the applicable week; and
 - would otherwise have been eligible to receive wage subsidies through the CEWS.
- **Amounts for non-arm's length employees different.** For these employees, the subsidy amount available is limited to the eligible remuneration paid to the employee in the particular pay period between March 15 and June 6, 2020. The wage subsidy is only available in respect of non-arm's length employees employed prior to March 15, 2020. The maximum benefit available to arm's length employees is **the lesser of:**
 - \$847 per week; **or**
 - 75% of the employee's pre-crisis remuneration.
- **Tax treatment of CEWS payments.** The usual treatment of tax credits and other benefits provided by the government applies to the CEWS. Amounts received by an employer under the CEWS is considered government assistance and therefore should be included in the employer's taxable income. Assistance received under either wage subsidy reduces the amount of remuneration expenses eligible for other federal tax credits calculated on the same remuneration.
- **Anti-avoidance measures.** The CEWS is not available where:
 - a person or partnership not dealing at arm's length with an employer, enters into a transaction, participates in an event, takes an action, or fails to take an action that has the effect of reducing the qualifying revenues of the employer for a reference period; **and**
 - it is reasonable to conclude that one of the main purposes of the transaction, event, or action, or a series thereof, is to cause the employer to qualify for the CEWS.
- **Penalties for employers abusing the CEWS.** The government has clarified that employer's who claim CEWS but are not in fact eligible will be required to repay any amounts received.

- Businesses artificially reducing their revenues to claim CEWS will be subject to a penalty of 25% of the subsidy claimed in addition to the repayment obligation.
- The government has indicated that businesses using CEWS payments for any purpose other than paying employees may be subject to penalties of up to 225% of the CEWS amounts received, and a possible jail sentence of up to 5 years.
- **Effects on the Canada Emergency Response Benefit (“CERB”).** The government has suggested that it may introduce a process whereby, employees who have received CERB but are re-hired by virtue of their employer receiving CEWS payments, can repay any overlapping amounts.

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](#), [Justin Anisman](#), [William McLennan](#), or Alyssa Jagt.