Updates to the Canada Emergency Wage Subsidy and the End of Ontario's Declared Emergency

Over the past week, two major changes occurred concerning the COVID-19 response from the Governments of Canada and Ontario:

- Canada announced that the Canada Emergency Wage Subsidy would continue until at least November 21, 2020, but with substantial changes.

- Ontario passed legislation ending its "Declared Emergency", which will impact both its ability to issue new Emergency Orders in response to the pandemic and the continuation of various legislative initiatives taken in response to the pandemic.

Canada Emergency Wage Subsidy ("CEWS")

On July 17, 2020, the Government of Canada tabled changes to the CEWS. These changes, which are expected to be ratified, overhaul and extend the program.

In brief, the following changes would apply to the new CEWS:

- For active employees, a two-part CEWS will apply: the "base subsidy" and the "top-up subsidy". Details for the eligibility, amounts, and calculations of these two subsidies are set out below.

- For furloughed employees (i.e., those that are not active and not entitled to either the base subsidy or the top-up subsidy), the CEWS rate will remain the same in Periods 5 and 6 as previously used in Periods 1 through 4. For Periods 7 through 9 (August 30 to November 21), the rate will be adjusted to align with benefits provided under the Canada Emergency Response Benefit and/or Employment Insurance.

- The previous rules excluded otherwise eligible employees who were without remuneration for 14 or more consecutive days. Effective July 5, 2020, this exclusion would no longer apply. The other eligibility requirements for employers and employees remain in effect.

- The new rules will introduce an appeal process. The process will be based on the existing procedure for notices of determination that allow for an appeal to the Tax Court of Canada.

- There will be continuity rules for the calculation of an employer's drop in revenues in certain circumstances where the employer purchased all or substantially all the assets used in carrying on business by the seller.

- Prescribed organizations that are registered charities or non-profit organizations will be able to choose whether or not to include government-source revenue for the purpose of computing their reductions in qualifying revenue.

- Entities that use the cash method of accounting will now be permitted to elect the use accrual-based accounting to compute their revenues for the purpose of the CEWS.

"Base Subsidy" Amounts for Active Employees:

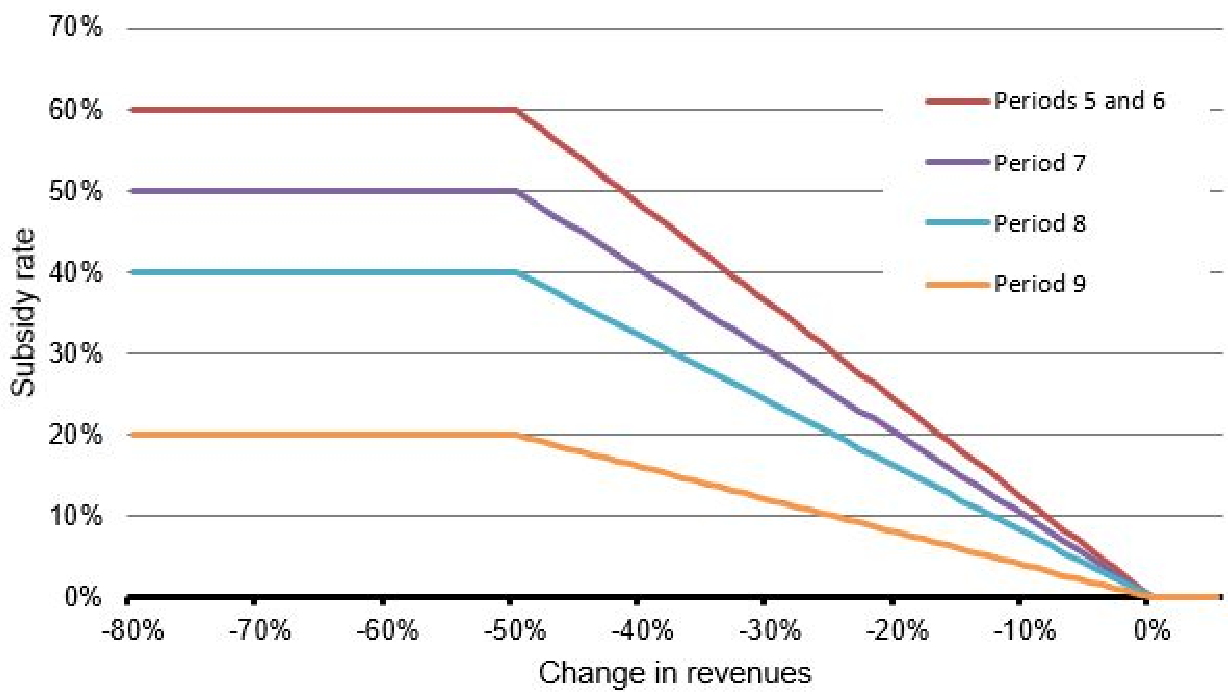
As of July 5, 2020, the CEWS "base subsidy" will be available to employers affected by the pandemic who have experienced **any** decline in revenues. This eliminates the "all-or-nothing" 30% threshold under the previous rules. For Periods 5 and 6 (July 5 to August 29), however, employers who experience a drop in revenues of 30% or more, and who would be better off receiving the original 75% CEWS, will remain eligible for that amount.

The new CEWS will be based on the weekly remuneration paid to an eligible employee during the eligibility period. The eligible remuneration will be capped at $1,129 per week. Remuneration is still defined to include salary, wages, and other remuneration.

Initially, the maximum amount of the base subsidy will be 60% of the weekly amount above, or $677 per week. This maximum base rate will be gradually reduced from 60% in Periods 5 and 6 (July 5 to August 29) to 20% in Period 9 (October 25 to November 21).

The applicable rate of the base subsidy is determined against a sliding scale of the eligible employer's drop in monthly revenues. Where an eligible employer experiences a drop in revenues of 50% or more, the base rate for an eligible employee would be the full 60%. For a lower drop in revenue, a correspondingly lower rate for the base subsidy would apply. The formula for this determination is summarized in the table and graph below.

Timing:	Maximum weekly benefit per employee:	Revenue drop 50% and over:	Revenue drop 0% to 49%:
Period 5: July 5 – August 1	Up to $677	60%	1.2 x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)
Period 6: August 2 – August 29	Up to $677	60%	1.2 x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)
Period 7: August 30 – September 26	Up to $565	50%	1.0 x revenue drop (e.g., 1.0 x 20% revenue drop = 20% base CEWS rate)
Period 8: September 27 – October 24	Up to $452	40%	0.8 x revenue drop (e.g., 0.8 x 20% revenue drop = 16% base CEWS rate)
Period 9: October 25 – November 21	Up to $226	20%	0.4 x revenue drop (e.g., 0.4 x 20% revenue drop = 8% base CEWS rate)



"Top-Up" Eligibility and Amounts for Active Employees:

Where available, the top-up subsidy will be added to the base subsidy. The top-up is only available to employers who experience a three-month average revenue drop of more than 50%.

As with the base rate, the top-up rate varies depending on the amount of the three-month revenue drop. Employers with a drop in revenues of 70% or more will be eligible for a top-up subsidy at the full rate of 25% of the eligible employee's weekly remuneration. Employers with a drop of 55% will be eligible for the lowest top-up rate of 6.25%.

As a result, under the new two-art CEWS, eligible employers could receive a rate of 85% in Period 5, and eventually a rate of 45% in Period 9.

3-month average revenue drop:	Top-up CEWS rate:	Top-up calculation = 1.25 x (3-month revenue drop - 50%):
70% and over	25%	1.25 x (70%-50%) = 25%
65%	18.75%	1.25 x (65%-50%) = 18.75%
60%	12.5%	1.25 x (60%-50%) = 12.5%
55%	6.25%	1.25 x (55%-50%) = 6.25%
50% and under	0.0%	1.25 x (50%-50%) = 0.0%

Details on the new CEWS rules can be found in the government's backgrounder. Our discussions of the original CEWS rules can be accessed here and here.

The End of Ontario's Declared Emergency and the Availability of Certain Statutory Leaves of Absence

On July 21, 2020, Ontario passed into law Bill 195, *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (the "**Act**"). Under the Act, Ontario's Declared Emergency ends on July 24. This has numerous implications for employers and employees alike.

For now, all Orders made under the *Emergency Management and Civil Protection Act* during the pandemic will remain in force until August 23. This includes Orders related to essential businesses and closures.

More immediately, the Act and the end of the Declared Emergency means employees can no longer claim a "Declared Emergency Leave" under the *Employment Standards Act, 2000* (the "**ESA**"). Employees can, however, still access an "Infectious Disease Emergency Leave" under the ESA, which is available to employees who must be away from work for reasons related to COVID-19.

The end of the Declared Emergency also sets the end date for the temporary changes to the ESA that were implemented by O Reg 228/20, which we discussed previously. Among other things, O Reg 228/20 prevented layoffs caused by COVID-19 from becoming constructive dismissals under the ESA, thus triggering severance obligations. With the end of the Declared Emergency, that suspension and the other changes in O Reg 228/20 will end on September 4, 2020.

This publication is intended only to provide general information on these changes. 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.