



## **Updates on Canada and Ontario's COVID-19 Responses**

As businesses reopen across Ontario, both the Government of Canada and the Government of Ontario continue to adjust their responses to the COVID-19 pandemic. The following update summarizes the current state of these initiatives as of July 5, 2020. We will continue to provide periodic summaries of these programs as major developments occur.

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](#).

### **Canada Emergency Response Benefit ("CERB")**

[As previously reported](#), the CERB is a taxable benefit of \$2,000 over a four-week period for eligible workers who, due to COVID-19, have stopped working or whose work hours have been reduced.

The Government of Canada has extended the CERB program by eight weeks. It will now last 24 weeks and, currently, will end on August 29, 2020.

To encourage workers to return to work, the Government has changed the attestation that must be made each time an individual applies for another round of CERB payments. It now encourages Canadians receiving the benefit to find employment and to consult Job Bank, Canada's national employment service.

In the same vein, the Government has added CERB to the CRA's "Leads Program", which allows individuals to anonymously report suspected cases of fraud. The Leads Program can be accessed [here](#).

The following criteria continue to apply to be eligible for CERB:

- The applicant lives in Canada.
- The applicant is at least 15 years old.
- The applicant has stopped working because of reasons related to COVID-19, or are eligible for Employment Insurance regular or sickness benefits, or have exhausted

their Employment Insurance regular or fishing benefits between December 29, 2019 and October 3, 2020

- The applicant had employment and/or self-employment income of at least \$5,000 in 2019, or in the 12 months before the date of their application
- The applicant has not earned more than \$1,000 in employment and/or self-employment income per benefit period while collecting the CERB (i.e., the applicant may earn up to \$1,000 in each four-week period).
- The applicant did not quit their job voluntarily.

## **Canada Emergency Wage Subsidy (“CEWS”)**

[We previously explained that](#) the CEWS provides eligible employers/employees with a subsidy of 75% of an employee’s wages. On May 15, 2020, the Government of Canada extended the CEWS by an additional 12 weeks. As a result, the CEWS is retroactively available for wages from March 15, 2020 to August 29, 2020.

The eligibility criteria in place before the extension continued to apply into the first period of the extension (June 7 to July 4). They can be reviewed in the link above. Any changes to the criteria would therefore only start in period 5 (July 5 to August 1) and/or period 6 (August 2 to August 29).

While the specific criteria for eligibility have not yet been changed, the list of employers who may apply has been expanded. As of July 2, 2020, the following employer may apply for the CEWS:

- individuals (including trusts);
- corporations that **are not exempt** from income tax (Part I of the Income Tax Act);
- the following persons that **are exempt** from income tax (Part I of the Income Tax Act):
  - non-profit organizations;
  - agricultural organizations;
  - boards of trade;
  - chambers of commerce;
  - non-profit corporations for scientific research and experimental development;
  - labour organizations or societies; and

- benevolent or fraternal benefit societies or orders;
- registered charities;
- certain Indigenous government-owned corporations that carry on a business;
- partnerships consisting of eligible employers and certain Indigenous governments;
- registered Canadian amateur athletic associations;
- registered journalism organizations;
- private schools or private colleges; and
- partnerships consisting of eligible employers (including partnerships where at least 50% of the interests in the partnership are held by eligible employers).

Public institutions remain ineligible for the CEWS. This includes municipalities and local governments, Crown corporations, public universities, colleges and schools, and hospitals.

### **10% Temporary Wage Subsidy (“TWS”)**

The Government of Canada has also made changes to the TWS, originally implemented on March 25, 2020. Our original discussion of this subsidy can be found [here](#).

The TWS is available for remuneration paid between March 18, 2020 and June 19, 2020. Unlike the CEWS, employers do not have to apply for the TWS. It is accessed through deducting the subsidy amount from payroll withholdings payable to the CRA.

The amount of the TWS is a “prescribed percentage” of eligible remuneration paid during the applicable period. The default prescribed percentage is 10%. The TWS cannot, however, be greater than the maximum “prescribed amounts” per eligible employee (\$1,375) and per eligible employer (\$25,000).

Some employers may be eligible for both the TWS and the CEWS. In such cases, amounts received through the TWS will affect payments received through the CEWS. Where an employer applies for CEWS, if they claim a TWS amount that works out to less than 10%, the CRA will consider the employer to have elected a prescribed percentage that is less than 10% for the purposes of their TWS application. In these instances, the employer should also indicate on its TWS applications that it is claiming a lower prescribed percentage.

The following criteria continue to apply to be eligible for TWS:

- The applicant must have an existing business number and payroll program account with the CRA on March 18, 2020.

- The applicant must pay salary, wages, bonuses, or other remuneration to an “eligible employee” (i.e., an individual who is employed in Canada).
- The applicant must be:
  - an individual (excluding trusts);
  - a non-profit organization;
  - a registered charity;
  - a Canadian-controlled private corporation (including a cooperative corporation)—but only if it is otherwise eligible for the small business deduction: for their last taxation year that ended before March 18, 2020, they have a business limit that is greater than nil, determine without reference to the passive income business limit reduction; or
  - a partnership—but only if their members consist exclusively of individuals (excluding trusts), registered charities, other partnerships eligible for the subsidy, or eligible Canadian-controlled private corporations (CCPCs).

## **Canada Emergency Business Account (“CEBA”)**

The Government of Canada has continued expanding eligibility for the CEBA. As of May 19, 2020, businesses eligible for the CEBA include owner-operated small businesses that do not have a payroll, sole proprietors receiving business income directly, and family-owned corporations remunerating in the form of dividends rather than payroll.

The CEBA was launched on April 9, 2020. It provides interest-free loans of up to \$40,000 to small businesses and not-for-profits. Repaying the balance of the loan on or before December 31, 2022 will result in loan forgiveness of 25% (i.e., up to \$10,000).

The CEBA has \$55 billion in funding and is implemented by eligible financial institutions, in cooperation with Export Development Canada. There are currently 233 financial institutions participating in the CEBA.

A list of those institutions and additional details about the CEBA can be accessed on the government’s website [here](#).

The following criteria must be met to be eligible for CEBA:

- The applicant is a Canadian operating business in operation as of March 1, 2020.
- The applicant is a registered for federal taxes.

- The applicant is an active business chequing/operating account with the lending financial institution, which is its primary financial institution. The account was opened on or prior to March 1, 2020, and it was not in arrears on existing borrowing facilities, if applicable, with the lending institution by 90 days or more as at March 1, 2020.
- The applicant did not previously use the CEBA and must not apply for support under the CEBA at any other financial institution.
- The applicant must acknowledge its intention to continue to operate its business or to resume its operations.
- The applicant must agree to participate in post-funding surveys conducted by the Government of Canada or any of its agents.
- The applicant must **either**:
  - have paid a total employment income of between CAD \$20,000 and CAD \$1.5 million in 2019; **or**
  - if they have paid employment income of CAD \$20,000 or less in 2019:
    - have a CRA business number;
    - have filed a 2018 or 2019 tax return;
    - have eligible non-deferrable expenses between CAD \$40,000 and CAD \$1.5 million in 2020, which could include rent, property taxes, utilities, and insurance.

The following other COVID-19 response programs will cause adjustments to the eligible non-deferable expenses above:

- CEWS (see above);
- TWS (see above);
- Canada Emergency Commercial Rent Assistance, Regional Relief and Recovery Fund (see below);
- Futurpreneur Canada;
- Northern Business Relief Fund;
- Fish Harvester Grant;
- relief measures for Indigenous businesses; and
- \$250 million COVID-19 IRAP (Industrial Research Assistance Program) Subsidy Program.

## **Ontario-Canada Emergency Commercial Rent Assistance Program (“ECRA”)**

The ECRA is being provided through a partnership of the Governments of Ontario and Canada. Originally, the cost of rent for April, May, and June of 2020 is to be shared between small business tenants, landlords, Ontario, and Canada. On June 30, 2020, the program was extended to include the month of July. Participation in the one-month extension is voluntary for both new and existing applicants.

[Applications are to be made through the Canada Mortgage and Housing Corporation.](#) Existing applicants need to reapply for the month of July and have until September 14, 2020 to do so. New applicants have the choice of applying for the three-month initial period or the four-month revised period, but must do so by the original date of August 31, 2020.

The benefit is retroactive to April 1, 2020. “**Eligible landlords**” may apply for the benefit with respect to “**impacted small business tenants**”.

### **“Eligible landlords”:**

- have an impacted small business tenant;
- are the registered owner of the commercial or mixed-use property where the small business is located; and
- enter into a legally binding “rent reduction agreement”, for the period of April, May, and June 2020, to reduce their impacted small business tenant’s rent by at least 75%, which “rent reduction agreement” must include at least:
  - a moratorium on eviction for the period during which the property owner agrees to apply the loan proceeds; and
  - a declaration of rental income in an attestation.

### **“Impacted small business tenants”:**

- may include non-profit and charitable organizations;
- pay no more than \$50,000 in gross rent each month, per location;
- are experiencing at least a 70% drop in pre-COVID-19 revenues (determined by comparing revenues in April, May, and June 2020 to the same months in 2019, or by comparing to average revenues for January and February 2020); and

- generate \$20 million or less in gross annual revenues, calculated on a consolidated basis (at the ultimate parent level).

Those who qualified for the benefit before the July extension may apply for the additional month without reassessing whether they continue to have a 70% revenue decline in July.

Where the above criteria are met and the eligible landlord reduces the impacted small business tenant's rent by 75%:

- the tenant would pay 25% of their rent
- the Governments of Ontario and Canada would share the remaining 50% through a forgivable loan.

These loans would be forgiven if the eligible landlord complies with all terms and conditions of the program, including the agreement not to recover rent payments from April to July.

Where rent has already been collected at the time of the application, the eligible landlord must either:

- refund the amount paid by the impacted small business tenant that is in excess of 25% of rent; or
- apply rent paid that is in excess of 25% of rent to future rent owing, if the impacted small business tenant agrees.

Certain businesses are not eligible. Details on those exclusions and other aspects of the ECRA can be accessed [here](#).

## **Ontario Regulation 228/20: Infectious Disease Emergency Leave**

On May 29, 2020, the Government of Ontario published Ontario Regulation 228/20. Among other things, the Regulation temporarily suspended the termination and severance provisions of the *Employment Standards Act, 2000* for business impacted by the coronavirus pandemic. Our discussion of the Regulation can be found [here](#).