What's New in HR Law

CEWS Revisited: What Employers Need to Know

November 26, 2020

Bottom Line

On November 19, 2020, Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)* received Royal Assent. Bill C-9 revises the eligibility criteria and the level of subsidization that employers can access under the Canada Emergency Wage Subsidy (CEWS), and extends the overall program to June 30, 2021.

Changes to the CEWS Program

In July 2020, the CEWS program was significantly redesigned such that an employer's CEWS eligibility would be determined using a sliding scale model where any available subsidy was proportional to the employer's revenue decline. See our previous update on July 28, 2020 for a review of these earlier changes.

Bill C-9 has made further revisions to the program. Employers seeking to benefit from the CEWS should familiarize themselves with the latest changes and understand the impact they may have on their claim to subsidy funds.

(i) Base Subsidy

The CEWS “base subsidy” is available to all employers whose revenues have been impacted by the pandemic. Before Bill C-9, the base subsidy was set to be substantially reduced beginning at Period 9 (i.e. October 25, 2020 – November 21, 2020). Now, as a result of Bill C-9, the base subsidy will continue as it existed in Period 8. The result is that for employers who have experienced a revenue drop of 50% or more, the base subsidy will be 40%. For those employers who have experienced a revenue drop of between 0% and 49%, the base subsidy will be equal to 80% of the revenue drop. Importantly, in either case the maximum amount of the base subsidy can be no more than $452 per employee. This calculation will also extend to Period 10 (i.e. November 22, 2020 – December 19, 2020).

(ii) Top-Up Subsidy

Bill C-9 also makes adjustments to the CEWS “top-up subsidy”, which is available in addition to the base subsidy for employers who have experienced a revenue drop of 50% or more. Previously, eligible employers were generally required to calculate the amount of the top-up by using the revenue drop over the preceding three months, as compared to the same three-month period in the prior year. As a result of Bill C-9, the top-up subsidy will be calculated based on the change in the employer’s monthly revenues, year-over-year, for either the current or previous calendar month. These changes are retroactive to September 27, 2020. The result is that employers who experienced a financial rebound in the summer will not be forced to account for these gains when determining their monthly revenue drop in the fall and winter months. The new legislation also provides for a “safe harbour rule”. Under this rule, no employer will receive a smaller top-up subsidy than that for which they would have been eligible absent the recent changes.

(iii) Baseline Remuneration

The calculation of baseline (or “pre-crisis”) remuneration, which is used to determine an employer’s entitlement to the CEWS in respect of an employee, has also been impacted by Bill C-9. Employers are now able to elect for each qualifying period from Periods 5 to 10 (July 5 to December 19, 2020), a special baseline remuneration period in respect of an eligible employee returning from a continuous maternity, parental, caregiver, or long-term sick leave that began before July 1, 2019 and ended after March 15, 2020. The special remuneration period is the 90-day period ending immediately before the beginning of the employee’s leave period.

(iv) Eligible Employee

The definition of “eligible employee” for the purposes of calculating CEWS entitlement has been narrowed. Now, only employees of an eligible entity employed *primarily in Canada* throughout a qualifying period (or portion thereof) are included.

(v) Application Period

Commensurate with the extension of the CEWS program generally, employers now have more time to make their wage subsidy applications. The new deadline to make an application for a qualifying period is the later of January 31, 2021 or 180 days after the end of the qualifying period.

(vi) Expansion of Relieving Rule for Sale of Assets

The CEWS program has a relieving rule that applies when an entity purchases all or substantially all of the business assets of a seller. If both parties jointly elect, the purchaser can use the prior reference period revenue associated with those assets for the purpose of computing its total revenue decline. In other words, the year-over-year revenue decline associated with purchased assets attaches to those assets. Bill C-9 expands this rule to allow it to be used when an entity purchases, at arm's length, the assets of a business or of a distinct part of a business and those assets are used to carry on the purchaser's business. The rule is no longer limited to the purchase of "all, or substantially all" of a seller's business assets. As with the existing rule, the parties would need to make a joint election..

Employees Temporarily Laid Off With Pay

While not contained in the text of Bill C-9, the federal Department of Finance has announced its intention to make additional changes to the CEWS in respect of employees who have been temporarily laid off with pay (i.e. on paid "furlough"). It has been announced that, for Periods 9 and 10, the wage subsidy for furloughed employees will be adjusted to align with the benefits provided through Employment Insurance (EI). Specifically, the subsidy for such employees would be equal to the amount of eligible remuneration paid in respect of the week; or, if the employee receives remuneration of $500 or more in respect of the week, the greater of $500 and 55 per cent of pre-crisis remuneration for the employee, up to a maximum subsidy amount of $573.

It is expected that that the above-described changes will be implemented by way of regulation. Given these anticipated changes, which would align the CEWS benefits available to furloughed employees with those available through the Canada Recovery Benefit or EI, employers may wish to reconsider their reliance on the CEWS for employees in this category. This may be particularly true for employers who wish to provide additional support to employees, as a registered Supplementary Unemployment Benefit Plan would allow them to "top up" the employee's EI benefits and provide additional funds beyond the new CEWS maximum of $573.

Check the Box

These continue to be difficult and challenging times for employers across a variety of sectors. Filion Wakely Thorup Angeletti LLP continues to closely monitor the developments surrounding the COVID-19 pandemic, and will provide additional updates as new information becomes available.

Need more information?

For more information regarding workplace management amidst the ongoing COVID-19 pandemic, please contact Mark Van Ginkel at 416.408.5560, or your regular lawyer at the firm.

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