



What's New in HR Law

Supplemental Unemployment Benefit (SUB) Plans: Overview for Employers

April 6, 2020

The ongoing COVID-19 pandemic has created an unprecedented economic climate for businesses across Canada. Many businesses have responded by closing their doors and laying-off employees.

In some cases, employers seeking to assist laid-off employees during this ongoing period of economic uncertainty may consider “topping up” or “supplementing” their employees’ Employment Insurance Benefits (“EI Benefits”) by registering a Supplemental Unemployment Benefit Plan (“SUB Plan”) with Service Canada.

What is a SUB Plan? What are its Advantages?

A SUB Plan is a document that governs the relationship between an employer, who wishes to top up their employees’ EI Benefits, and Service Canada, which oversees the EI Benefit regime.

Employees who are laid-off may qualify for EI Benefits which are payable in the maximum amount of fifty-five percent (55%) of earnings up to \$573.00 per week.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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In the ordinary course, subject to certain exceptions, an employee cannot simultaneously receive EI Benefit payments *and* income from their employer (or any other source). In the absence of a SUB Plan, if additional income is earned it will generally be deducted from an employee's EI Benefit payments. However, by registering a SUB Plan with Service Canada, an employer establishes certain parameters around the "top-up" payments and safeguards them from the ordinary offset rule.

How does an Employer Register a SUB Plan?

An employer who has laid-off employees as a result of a temporary stoppage of work, training, illness, injury or quarantine may submit a SUB Plan application which should consist of the following three parts: (i) **SUB Plan Registration Form**; (ii) **SUB Plan Document**; and (iii) **Additional Documents**.

(i) SUB Plan Registration Form

The employer will have to fill out a SUB Plan Registration Form indicating its business number for payroll deductions, and other contact information.

(ii) SUB Plan Document

The SUB Plan Document governs the terms of the SUB Plan. As such, employers seeking to draft a SUB Plan Document should turn their minds to the following questions:

- Will the SUB Plan cover lay-offs related to temporary stoppage of work and/or sickness and quarantine as a result of COVID-19?
- What group of employees will be eligible for the "top-up" payment?
- Will any limitations apply to that specific group of employees? (e.g. length of service)
- What amount of top-up benefit will be payable? (Note: the combined total of EI Benefits and "top-up" payment must not exceed 95% of an employee's regular weekly earnings)
- How long will SUB Plan payments be payable?
- Will the employer pay the "top-up" out of its general revenues?
- How will the employer confirm receipt of its employees' EI Benefits?

(iii) Additional Documents

Lastly, employers must provide any additional documents which may set out relevant SUB Plan terms, including:

- any **company policies** and/or **personnel guidelines** containing information about the plan, as well as any **declarations** that employees have to sign to receive the SUB payment;
- a copy of the **relevant section of the insurance policy** used to administer the SUB Plan;
- a copy of a **Trust Agreement**; and/or
- a copy of a current **collective agreement(s)**.

Collectively, the SUB Plan Registration Form, SUB Plan Document, and Additional Documents must be submitted to Service Canada in hard copy by facsimile as follows:

Service Canada - Supplemental Unemployment Benefit (SUB) Program
120 Harbourview Boulevard
P.O. Box 11,000
Bathurst, New Brunswick E2A 4T5
Telephone: 1 800 561-7923
Fax: (506) 548-7473

Can the Canada Emergency Response Benefit be “Topped Up”?

In a previous [article](#) dated March 27, 2020, our firm provided an overview of the recently enacted *Canada Emergency Response Benefit Act* which provides the Canada Emergency Response Benefit (“CERB”), a new income support benefit available to workers who have been laid-off as a result of a shortage of work related to the COVID-19 pandemic.

Briefly, according to the Federal Government, the CERB will be available to all workers affected by COVID-19 for a period of four (4) months in the amount of \$2,000.00 a month.

To date, the Federal Government has not confirmed or provided any indication on how the CERB will interact with existing or future SUB Plans, including whether or not employers will be able to top-up CERB payments in the event that the CERB replaces EI benefits in the first four (4) months of unemployment.

Our firm is monitoring these developments closely. We recommend discussing your options with a lawyer before preparing a SUB Plan.

Need more information?

If you need more information about SUB Plans, please contact [Janeta Zurakowski](#) at 905-972-6876 or your regular lawyer at the firm.



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