



# What's New in HR Law

## Federal Government enacts the *Canada Emergency Response Benefit Act*, among other Statutory Changes

March 27, 2020

### COVID-19 Update

On March 25, 2020, the Federal Government passed new legislation creating income support benefits for workers who suffer income loss due to COVID-19. It also passed amendments to both the *Canada Labour Code* (“Code”) and the *Employment Insurance Act* (“EIA”) in response to the ongoing COVID-19 pandemic.

### Bill C-13, *An Act respecting certain measures in response to COVID-19*

The Federal Government’s Bill C-13, *An Act respecting certain measures in response to COVID-19*, received Royal Assent on March 25, 2020.

Included among Bill C-13’s measures was the creation of new income support legislation, the *Canada Emergency Response Benefit Act*, as well as amendments to both the *Code* and the *EIA*.

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

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## ***Canada Emergency Response Benefit Act***

Bill C-13 combines the two emergency benefit measures announced earlier by the Federal Government (the Emergency Care Benefit and the Emergency Support Benefit) into one overarching income support benefit, which has been labelled the Canada Emergency Response Benefit (“CERB”).

The CERB is separate and distinct from the Employment Insurance (“EI”) program. All workers who meet the legislated eligibility criteria will be able to receive the CERB, regardless of whether they qualify to receive EI benefits.

The CERB effectively replaces EI for workers who have ceased working for any of the following COVID-19 related reasons:

- layoff or dismissal as a result of shortage of work;
- sickness, quarantine, or caring for someone who is sick with COVID-19; and
- caring for children because of school and daycare closures.

The information available at this time suggests that the CERB will provide \$2,000 a month for up to four months (i.e. 16 weeks). The precise amount of a weekly income support payment will be set by regulation. The CERB will be paid for 4-week periods between March 15, 2020 to October 3, 2020 (16 weeks of benefits) during which a worker meets the eligibility criteria.

The CERB is available to both employees and self-employed workers who meet the following eligibility criteria:

- 15 years of age or older;
- Canadian citizens;
- have an income of \$5,000 or more in the 12 months preceding their application which has been earned from employment, self-employment, or pregnancy or parental EI benefits;
- cease working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply; and
- have not received during the same consecutive 14-day period referenced above any of the following:
  - employment or self-employment income;
  - EI benefits; or
  - pregnancy or parental benefits under a provincial plan.

The Federal Government has advised that the portal to apply and access the CERB will be available in early April, and benefits would be payable within 10 days of application. There is no waiting period for the CERB.

Workers who may already be in receipt of EI regular or sickness benefits will continue to receive their EI benefits. However, they will be eligible for the CERB if those benefits end prior to October 3, 2020 and they are still unable to return to work due to COVID-19 at that point in time.

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For workers who have already applied for EI regular or sickness benefits, but whose applications have not been processed, their applications will be funneled through to the CERB. Workers who fall into this latter category may likewise be able to qualify for EI benefits at a later date if they remain out of work after the 16-week period covered by the CERB.

The legislation suggests that CERB payments will be offset by earnings and other income supports which may be received by a worker. It is likely that the regulations expected to be enacted under the *Act* will provide additional clarification on the mechanics of the offset and whether employers can provide a top-up to the CERB.

## ***Canada Labour Code Amendments***

The following amendments to the *Code* are applicable only to federally-regulated workplaces.

### Leave Related to COVID-19

As a result of Bill C-13, the *Code* now contains a new COVID-19 related leave of absence that corresponds with the CERB. Every federally-regulated employee is now entitled to a “Leave Related to COVID-19” of up to 16 weeks if the employee is unable or unavailable to work for reasons related to COVID-19. An employer may require a written declaration from an employee stating the reason for the leave, but a certificate from a health care practitioner is not required in order for the employee to qualify for the leave.

During the leave, the regular leave of absence protections apply, including seniority and benefit continuation protections, employee entitlements to be informed of employment opportunities upon request while on leave, and reprisal protection.

The new Leave Related to COVID-19 will be repealed on October 1, 2020.

### Quarantine Leave

After the *Code’s* Leave Related to COVID-19 provisions are repealed on October 1, 2020, the *Code* will be further amended by creating a new Quarantine Leave under the existing Medical Leave regime. This leave will likewise be subject to a 16-week maximum. In order to support an entitlement to Quarantine Leave, an employee may be required to provide their employer with a certificate issued by a health care practitioner if the leave will be three days or longer.

### Medical Certificates

In addition to the new leaves of absence, the *Code* has been amended such that, up to September 30, 2020, a medical certificate can no longer be required of an employee in order to obtain Compassionate Care Leave, Leave Related to Critical Illness, or Medical Leave under the *Code*. Subject to any extension of the medical certificate exemption, the *Code* will revert to requiring that employees provide a medical certificate in order to obtain Compassionate Care Leave, Leave Related to Critical Illness, or Medical Leave (including Quarantine Leave) as of October 1, 2020.

## **Employment Insurance Act Amendments**

Bill C-13 amended the *EIA* by providing the Minister of Employment and Social Development the power to make interim orders for the purpose of mitigating the economic effects of COVID-19.

Further, until September 30, 2020, a certificate issued by a medical doctor or other medical professional is no longer required where referenced in the *EIA*, and any benefit that would have been payable to an individual had such a certificate been issued is payable to the individual, as long as the Canada Employment Insurance Commission is satisfied that the individual is entitled to the benefit.

## **Future Updates**

Our firm continues to closely monitor the developments surrounding the COVID-19 outbreak and will continue to provide further updates as new information becomes available.

## **Need more information?**

For information regarding workplace management amidst the COVID-19 outbreak, contact [Danny Parker](#) at 416-408-5518, or your regular lawyer at the firm.



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