



What's New in HR Law

UPDATE: Canada Emergency Wage Subsidy

April 8, 2020

As outlined in our earlier [post](#), the Federal Government first introduced the Canada Emergency Wage Subsidy ("CEWS") on March 27, 2020. On April 8, 2020, the Federal Government announced additional details and changes to the CEWS. The changes allow for more flexibility in the program and the potential for more businesses to qualify.

15% Revenue Decline for March 2020 to be eligible for the CEWS

The Federal Government has recognized that, for many businesses, the impact of the COVID-19 pandemic did not begin until approximately the middle of March. As announced yesterday, the subsidy will now be available to employers who saw a decline in revenue of at least 15% in March 2020. To be eligible for the subsidy in April or May, a decline in revenue of at least 30% is still required. When applying for the subsidy, employers will be required to attest to the decline in revenue.

Two Comparison Methods to Determine Eligibility

There are now two possible methods to determine whether an employer is eligible for the CEWS:

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

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

1. A year-over-year comparison of monthly revenues (e.g., March 2020 over March 2019); or
2. A comparison of the employer's revenue against an average of their revenue earned in January and February 2020.

This revised approach to program eligibility appears to be the Federal Government's response to the fact that a number of employers (e.g., newly formed businesses, non-profits and charities, high-growth businesses, and businesses that experienced economic downturns in 2019) would not have qualified for the CEWS under the original criteria.

Employers will be required to select one of the two approaches, and will be required to use the same approach for their initial and any subsequent applications to the CEWS program.

| Eligible Periods | Claiming period | Required reduction in revenue | Reference period for eligibility |
|------------------|----------------------|-------------------------------|--|
| Period 1 | March 15 to April 11 | 15% | March 2020 over: <ul style="list-style-type: none"> • March 2019 or • Average of January and February 2020 |
| Period 2 | April 12 to May 9 | 30% | April 2020 over: <ul style="list-style-type: none"> • April 2019 or • Average of January and February 2020 |
| Period 3 | May 10 to June 6 | 30% | May 2020 over: <ul style="list-style-type: none"> • May 2019 or • Average of January and February 2020 |

Calculating Revenues: Cash or Accrual Method, Not Both

The Federal Government has clarified that employers applying for the CEWS will be allowed to calculate their revenues under either the accrual method or the cash method. A combination of both methods will not be allowed. Employers will need to select a method of revenue calculation and will be required to use that method for the duration of the wage subsidy program.

Registered charities and non-profits can choose whether to include revenue from government sources in their calculations. Similar to the requirement for private sector employers, charities

and non-profits will be required to choose one approach for the duration of the wage subsidy program.

Pre-Crisis Earnings: Average Weekly Wages for January 1st to March 15th

The amount of the wage subsidy is based, in part, on an employee's pre-crisis weekly earnings. Pre-crisis remuneration will be based on the average weekly remuneration paid to the employee from January 1, 2020 to March 15, 2020, excluding any seven-day periods where the employee did not receive any remuneration.

Employees not at "Arm's Length" with the Employer

Special rules exist for employees who do not deal at arm's length with their employer (e.g., family members employed by a family business). For these employees, the subsidy amount available is limited to the eligible remuneration paid to the employee in any pay period between March 15th and June 6th, up to a maximum benefit of the lesser of: (i) \$847 per week or (ii) 75% of the employee's pre-crisis remuneration. The wage subsidy is only available in respect of non-arm's length employees employed prior to March 15, 2020.

100% Refund for EI, CPP, QPP and QPIP: Only for Employees on Leave with Pay

The Federal Government is proposing a 100% refund for employer-paid contributions to Employment Insurance, Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund is only applicable to those employees who are on leave with pay. If the employee is on leave with pay for a portion of the week, and actively performing work for the employer for the remainder of the week, the employer would not be eligible for this refund.

Any refund will not be subject to the maximum weekly benefit of \$847 under CEWS; it will be in addition to that amount.

What about the CEWS and the Canada Emergency Response Benefit (CERB)?

It was previously announced that an employer was not allowed to collect the CEWS while an employee was also collecting CERB. However, the Federal Government has made it clear that employers are encouraged to rehire employees as quickly as possible. Given that an employee who has been laid off may have already applied to receive CERB, the Federal Government has indicated it is considering adding a process to avoid duplicative payments. This process may include allowing employees who are rehired to cancel their CERB claim, receive the CEWS through their employer instead, and repay any overlapping amounts.

Risk of Significant Penalties

If an employer claims the CEWS but does not meet the eligibility terms of the program, they will be required to repay any amounts received. For those businesses that engage in artificial transactions to reduce their revenue for the purpose of claiming the CEWS, they will be subject to a penalty of 25% of the subsidy claimed on top of the requirement to repay in full the amounts received. For those who engage in fraudulent claims or do not pay the claimed amounts to their employees, the government is contemplating penalties of up to 225% of what the business received and up to 5 years in jail.

When will funds arrive?

While exact timelines have not yet been released, the Federal Government has indicated that it plans to have the application process open in two to three weeks and funds released to employers within three weeks or less of the applications being submitted.

Future Updates

Parliament is expected to be recalled in the coming days, with passage of the bill expected sometime next week, depending on negotiations with opposition parties. Filion Wakely Thorup Angeletti LLP continues to closely monitor the developments surrounding the COVID-19 outbreak and will provide additional updates as new information becomes available.

Need more information?

For more information regarding workplace management amidst the COVID-19 outbreak, contact [Cassandra da Costa](#) at 519-435-6009, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca