



# What's New in HR Law

## Applications for the Canada Emergency Wage Subsidy Open on Monday, April 27th

April 24, 2020

The Federal Government recently announced that applications for the Canada Emergency Wage Subsidy ("CEWS") will open on April 27, 2020. The Government also released an [online guide](#) and [calculator](#) to assist employers prepare their applications for the CEWS. Below we outline how to best prepare yourself and your business to apply for the CEWS.

### What Should I Prepare to Apply for the CEWS?

First, review our April 14, 2020 website update with an [overview of the CEWS](#) to determine whether you are an eligible employer, if you have any eligible employees, and how to calculate the subsidy. Also, the Government recommends that applicants have a Canada Revenue Agency ("CRA") *My Business Account* and that their business details and direct deposit information are up to date. This will assist the CRA in quickly processing any CEWS payments that you may be eligible to receive.

Second, calculate your revenues to determine whether your business meets the required loss of revenue thresholds for the applicable qualifying periods (i.e. 15% for March, and 30% for each of

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](http://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](mailto: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](mailto: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](mailto:hamilton@filion.on.ca)

April and May). If you meet the eligibility requirements for one of the qualifying periods, then you can extend your eligibility for the next claiming period. You must keep your records that demonstrate the revenue reduction. They are not required for the CEWS application, but may be requested by the Government in the future to substantiate your eligibility for the CEWS.

Third, determine the eligible remuneration paid to eligible employees during the initial claiming period of March 15th to April 11th. Eligible remuneration includes amounts paid to an employee as salary, wages, taxable benefits, fees, and commissions. An eligible employee is an individual employed in Canada during the claiming period, except if there was a period of 14 or more consecutive days where the employee did not receive any pay (i.e., any eligible remuneration) from their employer.

There are additional claiming periods from April 12th to May 9th and from May 10th to June 6th. The legislation establishing the CEWS, the *COVID-19 Emergency Response Act, No. 2*, provided that the program may be extended until September 30, 2020. Thus, there may be additional claiming periods for the CEWS after June 6th. Applications for the CEWS subsidies may be filed after the end of each claiming period. Employers must file an application to claim the CEWS before October 1, 2020.

The Government recommends using their [calculation spreadsheet](#) to calculate the subsidy before any deductions are applied. It is possible that the subsidy for your business may be reduced if you are also utilizing the 10% Temporary Wage Subsidy program or a Work-Sharing benefit program through Economic and Social Development Canada.

The spreadsheet is set up to calculate the employer's possible wage subsidy based on either a weekly payroll or a bi-weekly payroll. The amounts should align with the dates of the claiming period. If your payroll periods do not align with March 15th to April 11th, you will need to calculate the eligible remuneration based on the claiming period dates.

The eligible remuneration that can be considered for the subsidy is remuneration earned in respect of the four weeks inside the claiming period (this may be earned compensation during those four weeks or paid leave covering the four weeks of the claiming period).

Fourth, input the values determined by the calculation spreadsheet into the [CEWS calculator](#), including the total number of eligible employees, the total eligible remuneration paid to the employees during the claiming period (currently March 15th to April 11th), and the total basic CEWS for the employees during this claiming period. With this CEWS calculator, employers can calculate their potential refund for employer-paid contributions (like Employment Insurance and Canada Pension Plan) for those eligible employees who were on paid leave for any full week during the claiming period. Employer-paid contributions for employees who were on paid leave for a partial week and who also worked a partial week will not be eligible for a refund of those contributions.

Fifth, determine if there are any deductions that would apply to your CEWS claim. Deductions would apply for amounts received under the 10% Temporary Wage Subsidy or any Employment

Insurance benefits your eligible employees would have received through a Work-Sharing Agreement.

Sixth, have all of the values determined through the calculation spreadsheet and the CEWS calculator readily available when you fill out your CEWS application. Given the amount of financial information involved in the CEWS application, being prepared will make the application process much easier.

Finally, log into your CRA *My Business Account* and begin the application process anytime between April 27, 2020 and October 1, 2020.

### **Can I retroactively rehire my employees and pay them using the CEWS?**

It is the Government's intent to keep as many employees as possible working and on the payroll of an employer. Therefore, employees who have been laid off may be rehired and retroactively added back onto the employer's payroll. Employers must pay the rehired employees before including them in the employer's application for the CEWS.

If you are using the CEWS and paying your employees at less than their usual compensation rate, there may be a risk of constructive dismissal. Please contact your regular lawyer at the firm to discuss these risks further.

Employees who are retroactively rehired may be required to repay some or all of any amounts they may have received through the Canada Emergency Response Benefit ("CERB") or Employment Insurance (EI). The Government has stated that more information about the interaction between the CEWS and the CERB will be announced shortly. However, as a precautionary measure, you may wish to advise employees in writing of their responsibility to cancel any CERB or EI benefits they may be receiving, and put them on notice of the fact that the employer will bear no responsibility for the repayment of any monies received by them under these programs.

### **When can I expect to receive the CEWS funds?**

Employers can expect to receive cheques via direct deposit as early as May 6, 2020. During a technical briefing held on April 21, 2020, CRA officials shared that they will begin processing applications on Monday, May 4, 2020. The Government expects that roughly one million employers will apply for the CEWS.

The CRA has also stated that all applications will go through an automatic audit to check for discrepancies or errors. Applications that raise concerns or are requesting amounts over an undisclosed threshold will go through a manual audit which could delay payments to employers. The CRA has reportedly tasked over 3,000 auditors with reviewing the CEWS applications when the program launches.

## Future Updates

Filion Wakely Thorup Angeletti LLP continues to closely monitor the developments surrounding government benefits for employers related to 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, 2<sup>nd</sup> 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