



What's New in HR Law

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

May 14, 2020

In a previous [update](#) dated March 27, 2020, we provided an overview of the *Canada Emergency Response Benefit Act*, which governs the administration of the Canada Emergency Response Benefit (“CERB”) program. The CERB is a new income support benefit available to workers who have ceased working for reasons relating to the COVID-19 pandemic.

When the CERB was initially rolled out, there were outstanding questions as to whether employers would be permitted to “top up” the government benefit and, in particular, whether registered supplemental unemployment benefit (SUB) plans would interact with the CERB.

On April 15, 2020 the Federal Government announced that the CERB would be expanded to allow workers to earn up to \$1,000.00 in each benefit period while in receipt of the CERB. While this program amendment made it clear that limited top up payments by an employer would be permitted, it did not answer the question of whether a registered SUB plan would apply.

This outstanding question now appears to have been answered by the Federal Government on its *Questions and Answers on the Canada Emergency Response Benefit* [webpage](#), which states:

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

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Given the simplified design of the Canada Emergency Response Benefit (CERB), the provisions that exist under the Employment Insurance (EI) system for employers to make additional payments to workers through SUB plans do **not** apply to employees who are receiving the CERB. Eligible individuals collecting the CERB receive \$2000 for a 4-week period and may earn up to \$1,000 in employment and/or self-employment income in each of their benefit periods from March 15, 2020 to October 3, 2020 while continuing to receive the CERB. Amounts received by individuals from any employer in excess of the \$1,000 threshold would create an obligation for the individuals to repay CERB amounts they received for the same benefit period.

Based on this guidance it is now clear that SUB plans will not interact, to any extent, with the CERB. However, employers will be able to top up employees' CERB payments, without registering a SUB Plan, by an amount of up to \$1,000.00 in each of the following eligibility periods:

Period	Period Dates
1	March 15, 2020 to April 11, 2020
2	April 12, 2020 to May 9, 2020
3	May 10, 2020 to June 6, 2020
4	June 7, 2020 to July 4, 2020
5	July 5, 2020 to August 1, 2020
6	August 2, 2020 to August 29, 2020
7	August 30, 2020 to September 26, 2020

It should also be noted that even though registered SUB plans will not interact with the CERB, they will continue to apply to employees who are currently receiving regular or sickness employment insurance (EI) benefits at this time. Similarly, a registered SUB plan would be applicable in situations where an employee who is currently receiving the CERB remains unemployed after October 3, 2020 and is eligible for EI benefits thereafter. For additional information about SUB plans, see our earlier update [here](#).

Employers wishing to provide supplemental benefits to workers during the pandemic should take heed of these rules and design their internal programs accordingly. Importantly, the Federal Government has cautioned that there will be financial consequences to employees who earn above and beyond the \$1,000.00 cap on earnings; those employees will have to repay a corresponding portion of the CERB payment in due course.

Need more information?

If you need more information about Federal Government income replacement and subsidy programs related to the COVID-19 pandemic, please contact [Janeta Zurakowski](#) at 905-972-6876 or your regular lawyer at the firm.



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