



What's New in HR Law

Redesigned Canada Emergency Wage Subsidy: What Employers Need to Know

July 27, 2020

Bottom Line

On July 27, 2020 Bill C-20, *An Act respecting further COVID-19 measures*, received Royal Assent. Bill C-20 significantly redesigns the Canada Emergency Wage Subsidy (CEWS) program, implements a one-time payment of up to \$600 to persons with disabilities, suspends limitation periods in civil litigation, and empowers Federal Ministers to extend or suspend select regulatory time limits. While the amendments imposed by Bill C-20 are far-reaching, this particular update focuses on the amendments to the CEWS program.

Changes to the CEWS Program

The CEWS provides support to employers who have experienced a decline in revenue by subsidizing certain remuneration paid to eligible employees. We have covered the previous iterations of the CEWS in our updates on [April 24, 2020](#), [April 14, 2020](#), [April 9, 2020](#), [April 2, 2020](#).

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

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Bill C-20 provides for a further extension of the CEWS claim periods until at least November 21, 2020 (with the possibility of further extension to the end of 2020). The deadline for applications for each claim period has also been extended to January 30, 2021.

Significantly, the redesigned CEWS program eliminates the 30% decline in revenue threshold requirement that applied in earlier claim periods. Retroactive to July 5, 2020, an employer's CEWS eligibility will be determined using a sliding scale model where any available subsidy is proportional to the employer's revenue decline.

While Bill C-20 makes a number of sweeping amendments to the CEWS program, the most significant changes are summarized below. Retroactive to July 5, 2020, the following new components will govern how the redesigned CEWS program is administered:

- A base subsidy, available to employers on a sliding scale based on their revenue decline;
- A top-up subsidy, available to employers who have experienced a 3-month average revenue decline of more than 50%;
- New or amended "reference periods" to determine the percent of revenue decline;
- A separate subsidy rate structure for furloughed employees;
- A new formula to calculate the wage subsidy for active employees;
- Amendments to the definition of eligible employee, removing the exclusion for employees who have been without remuneration for 14-days or more which applied in previous claim periods;
- A safe harbour provision for the July and August qualifying periods for those employers who would have received a larger wage subsidy under the original version of the CEWS; and
- Amendments to the anti-avoidance provisions to include actions which may increase the employer's possible subsidy.

Bill C-20 also includes, retroactive to April 11, 2020, a process whereby the Canada Revenue Agency will issue a "notice of determination" following the submission of a CEWS application, which may be appealed under the dispute resolution mechanism in the *Income Tax Act*.

As noted above, under the redesigned CEWS program, employers will be required to calculate their wage subsidy differently for active and inactive employees. However, calculation of the subsidy for inactive employees on leave with pay, described as "furlough" by the Federal Government, will remain the same until August 29, 2020 (i.e. the end of Period 6).

In subsequent claim periods, the available subsidy for inactive employees will generally be equal to the lesser of: (i) the employee's eligible remuneration; and (ii) an amount to be determined by regulation. The Federal Government has indicated that such a regulation is forthcoming. While the timing and details of this contemplated regulation are currently unknown, it is expected that the subsidy amount to be determined by regulation will align with anticipated changes to the Canada Emergency Response Benefit (CERB) and Employment Insurance benefits.

In addition to the changes summarized above, Bill C-20 also brings into force previously proposed amendments to the CEWS which were covered in our [May 19, 2020](#) website update:

- Alternative methods for calculating pre-crisis or baseline remuneration for seasonal employees and employees returning from extended leaves;
- Allowing amalgamated corporations to use their combined revenues to calculate revenue decline, unless one of the main reasons for amalgamation was to qualify for the CEWS; and
- Clarifying amendments regarding the eligibility of tax-exempt trusts for the CEWS.

Impact on Employers

Bill C-20 fundamentally alters the scope, nature, and eligibility requirements of the program. This is welcome news for employers who may have been unable to access support through the CEWS program previously because their revenue decline has been less than 30%. The new sliding-scale subsidy model should allow more employers to avail themselves of the CEWS, and allow those employers who have been the most impacted by the COVID-19 pandemic to receive greater amounts of aid. These and other amendments may also assist employers in their efforts to return employees to work by incenting a transition from the CERB to the CEWS.

The changes to the CEWS, while positive developments for many employers, also significantly increase the complexity of the program. Under the redesigned CEWS, there are additional risks regarding compliance with the program's rules. An employer is now required to carefully calculate its revenue decline percentage as it will be directly proportional to the subsidy received. Overestimating a revenue decline may result in claiming a subsidy which is higher than the subsidy for which the employer is actually eligible. The employer, by claiming an overestimated CEWS rate, risks a tax assessment for the amount of the excess subsidy claimed and the related interest, including possible penalties.

Due to the generous nature of the CEWS, the Federal Government has stated its concern regarding the potential for abuse. As noted above, Bill C-20 includes expanded anti-avoidance provisions. Previously, once an employer passed the 15% or 30% qualifying threshold, a precise calculation of revenue decline was not as significant for the purposes of the original CEWS. Going forward, the changes to the administration of the CEWS program and accompanying anti-avoidance provisions, make it imperative that employers calculate their revenue declines with precision.

It is anticipated that genuine disagreements between the Government and employers may arise as to the calculation of qualifying revenue declines, eligible remuneration, baseline remuneration, and the application of the anti-avoidance provisions. To ensure compliance with the revised CEWS program requirements and avoid potential penalties, employers are advised to consult with legal and financial advisors before submitting their applications.

Employers will also want to carefully consider how these revisions to the CEWS program impact their staffing decisions, if at all, in both the short and longer term.

Future Updates

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.



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