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## ARTICLE

# New COVID-19 wage subsidies for Canadian employers

Updated on April 9, 2020

The Government of Canada recently announced the Canada Emergency Wage Subsidy in order to help employers keep on and return employees to their payroll in response to the challenges posed by COVID-19 and the resulting shutdowns. On April 1, Finance Minister Bill Morneau and senior officials from the Department of Finance released details of the new subsidy.

## What wage subsidies are now available to businesses?

The Government of Canada is now offering two separate subsidy programs to businesses for a period of three months:

- 10 per cent subsidy: available to all eligible small businesses (defined as non-profits or Canadian-controlled private corporations (CCPC) with less than \$15 million of taxable capital). Businesses do not need to show a decline in revenue for this program.
- 75 per cent subsidy: available to any employer with a 30 per cent decrease in revenue drop (or 15 per cent for the month of March).

Both subsidies are available, but businesses must choose to benefit from only one subsidy. An employer which qualifies for and applies for both subsidies (*i.e.*, an eligible CCPC with a 30 per cent drop in revenue) will see a reduction in the 75 per cent subsidy by the amount granted by the 10 per cent subsidy.

- Applying to both programs may still be beneficial to eligible businesses facing cash flow issues. Because the 10 per cent subsidy is a reduction of remittances owed, while the 75 per cent subsidy is paid retroactively.

## What do we know about the new 75 per cent subsidy?

### Who is eligible?

- The Canada Emergency Wage Subsidy applies to private businesses which are not funded by the government (including sole proprietorships, corporations and partnerships) facing gross revenue declines of 30 per cent<sup>1</sup>, as well as any non-profits and charities that see similar declines in revenue.
- The following entities do not qualify:
- The wage subsidy will cover up to \$847 per week per employee, *i.e.*, 75 per cent of an annual salary of \$58,700. In effect, employers are eligible for a subsidy of up to 100 per cent of the first 75 per cent of pre-crisis wages or salaries of existing employees who are paid up to \$58,700 per year.
- Employers are also eligible for a subsidy of up to 75 per cent of salaries and wages paid to new employees.
- There is no limit on the overall subsidy amount an employer can claim.

## Are employers required to top-up the "remaining" 25 per cent of the employee's remuneration?

- The [Department of Finance's Background](#) states that employers must make their best efforts to top-up employees' salaries to bring them to pre-crisis levels.

## Can an employer pay employees and be eligible for this program even if the employee does not perform work?

- There does not appear to be an active work requirement, but the employer will need to meet all other requirements of the program – including the 30 per cent (or 15 per cent) decrease in revenues requirement. Employers should consult with their legal advisors on the implications of this, including setting clear expectations with employees with respect to the terms of employment during any non-active working period, expectations of being asked to work during this period and implications on benefit plan participation with service providers.

## How will payroll contributions be affected?

- On April 8, the government announced an expansion of the CEWS program through refunds of certain payroll contributions. Employer contributions to the EI, CPP, QPP, and QPII payments for eligible employees will be repaid to the employer for any employee who is being paid while on full leave from work. Employers must collect and remit such premiums as per usual, applying for a refund at the same time that they apply for the CEWS.

## What constitutes salary or wages for the purposes of the subsidy?

- Eligible remuneration includes salary, wages, and other remuneration for which employers are required to withhold and remit amounts to the CRA, but does not include severance pay, stock option benefits or taxable use of business assets (*e.g.* motor vehicles).
- The wage subsidy will apply to all non-arm's length employees who are on payroll before March 15, 2020.
- For employees who do not deal at arm's length with the employer (such as family members), the subsidy amount is limited to eligible remuneration paid in any period between March 15 and June 6, 2020, to a maximum benefit of \$847 per week or 75 per cent of weekly pre-crisis remuneration.

#### How will the decline in revenue be determined?

- For comparison purposes, revenue means gross revenue from arm's length sources calculated using the employer's normal accounting method, and excludes revenues from extraordinary items or amounts on account of capital.
- The monthly decline for each of March, April, and May 2020 will be determined with reference to the same month last year (*i.e.*, in 2019). This decline will be used to determine eligibility for each "claim period" in the following table:

	Claiming period	Reference period for eligibility
Period 1	March 15-April 11	March 2020 over March 2019
Period 2	April 12-May 9	April 2020 over April 2019
Period 3	May 10-June 6	May 2020 over May 2019

- The Department of Finance has acknowledged that it will be tricky to determine the amount of the decline for non-profits and businesses which are eligible for the subsidy but receive some government funding. As such, on April 8, 2020, the Prime Minister announced that charities and non-profits may choose whether or not to include government sources of income such as grants in calculating their decline in revenue.
- The government has also announced on April 8, 2020 that certain qualifying rules will be relaxed following consultations with stakeholders. Under these rules, businesses may choose to compare their revenues with previous months in 2020 (*i.e.*, January or February) rather than comparing eligible incomes to the previous year.
- On April 8, 2020, the Minister of Finance announced that, for the purposes of calculating revenues, businesses can opt to measure revenue on using accrual methods (*i.e.*, when revenue is earned) or cash basis accounting (*i.e.*, when revenue is received) to ensure that more enterprises are eligible for the program. The government will release further guidance applicable to corporate groups, non-arm's length entities, and joint ventures.

#### How do new businesses, start-ups and seasonal businesses qualify?

- These businesses will likely be able to pick an alternate, reasonable point of comparison prior to the current March, April, May period. Further details will be released on this issue.

#### What are businesses required to do?

- Businesses are required to reapply for the subsidy each month.
- A portal will be established on the CRA website and businesses can apply through their "My Business Account."
- Employers must confirm that they are eligible employers and attest that they are doing everything possible to pay their employees the remaining 25 per cent of salaries (but do not actually have to pay the remaining 25 per cent of employee salaries if this is not possible).
- There will be severe penalties for abusing this "high-trust" system. However, the details of monitoring and penalties are yet to be determined.

#### Are employers legally required to recall employees that we have temporarily laid off?

- In general, no, and there is nothing in the [Department of Finance's press release](#) or Backgrounder indicating that there would be an obligation to recall laid off employees.

#### Does the wage subsidy affect the legal rights of employers to temporarily lay off employees that are not yet laid off?

- Depending on the circumstances, the wage subsidy may affect such rights. Specific legal advice is highly recommended, as the answer to this question will be fact-specific.

#### Should employers take specific action on the basis of this subsidy prior to the release of further details?

- The Finance Minister described this as \$71 billion program. Some details of the plan are still outstanding, including for non-profits and charities. Employers are advised to consult with legal advisors before taking any actions (including layoffs or recalling employees who have been laid off) with respect to the 75 per cent wage subsidy program.

#### How and when will businesses receive the subsidy?

- Minister Morneau and senior Finance officials estimated that payments would be processed in three to six weeks, with six weeks being the "worst case scenario". However, the press release indicates that payments will take up to three months.
- A portal will be coming online in the next two to four weeks.
- Businesses must pay for wages and administer payroll as usual (*i.e.*, net of EI and CPP) and will apply for the subsidy retroactively.

#### How much will this program cost?

- The wage subsidy is the largest economic program from the Government of Canada.
- It is estimated that the wage subsidy will cost \$71 billion and reduce the cost of the CERB to \$24 billion.

<sup>1</sup> On April 8, 2020, Prime Minister Trudeau advised that certain qualifying rules would be relaxed following consultations with stakeholders. Businesses will now have to show that they have a decline of 15 per cent in revenues in the month of March.

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