Employers and the COVID-19 Federal Emergency Response Act

March 26, 2020

The Government of Canada passed *An Act respecting certain measures in response to COVID-19* (the COVID-19 Act), which implements a number of legislative changes aimed at protecting Canadians workers and addressing the fallout from the current pandemic.

The new *Emergency Response Benefit Act*

In order to provide enhanced protections for those facing uncertainty over employment, the *Emergency Response Benefit Act* provides for the new Canada Emergency Response Benefit (CERB). The government has indicated that the amount of the benefit will be up to $2000 per month. It is intended to cover a 16-week period. The CERB replaces the previously announced Emergency Care Benefit and Emergency Support Benefit.

Who can apply?

The CERB is a taxable benefit available to workers who are at least 15 years old and who earned at least $5000 in 2019, or in the 12-month period preceding their application, from employment, self-employment, employment insurance or allowances or benefits under another provincial plan because of pregnancy or caring for a newborn.

Examples of workers who may be eligible for CERB include:

- Those who must stop working due to COVID-19 and do not have access to income support, such as paid leave;
- Workers who are sick, quarantined, or caring for someone who has COVID-19;
- Workers who must stay home without pay to care for their children due to the closure of schools and childcare facilities; and
- Wage earners and the self-employed, including contract workers, who would not otherwise be eligible for Employment Insurance.

Someone who quits their job is not entitled to receive the benefit.

What is the eligibility criteria?

A worker may apply for the benefit for any four-week period between March 15, 2020 and October 3, 2020. Applications will not be accepted after December 2, 2020.

In order to be eligible for the benefit, the individual must have stopped working for at least 14 days within the four-week period they apply for, and for reasons related to COVID-19. Additionally, the worker must not receive for the consecutive days:

- Income from employment insurance;
- Benefits as defined by the *Employment Insurance Act*;
- Money or other benefits under provincial legislation for pregnancy of care of a new-born; or
- Any other income outlined in the regulations.

How does the CERB work for those already collecting EI?

Those who are already receiving employment insurance (EI) and sickness benefits will continue to receive them. They should not apply for the CERB. Similarly, those who have already applied for EI and who are waiting for their application to be processed should not apply.

Canadians can apply for the CERB if their EI benefits cease prior to October 3, 2020, and if they are unable to return to work due to COVID-19.

Finally, Canadians who are eligible for EI regular and sickness benefits can still access these benefits if they remain unemployed after the 16-week period covered by the CERB.

When will the CERB become available?

Access to the CERB benefit is expected to commence in early April. It will be accessible through a secure web portal. It is expected that individuals will also be able to apply via an automated phone number or a toll-free number.

Do employers still need to issue temporary layoff notices?

There are a number of statements issued by the Government of Canada and in the media indicating that the CERB will be available to workers who continue to be employed, but are not being paid because their employer has asked them not to come to work.

This has caused some confusion around whether employers should proceed with temporary layoffs.

The COVID-19 Act does not deal with the employment relationship, as that is governed by provincial law (with the exception of federally-regulated employees). While the COVID-19 Act sets out a new benefits regime, it does not, in its present form, change the employment standards rules, including those associated with temporary layoffs, in the various provinces.

In order to be eligible for the CERB, the COVID-19 Act clearly states that individuals must have stopped working and been without any income for 14 consecutive days in order to be eligible for CERB. This requirement will have implications for the employment relationship that need to be carefully considered by employers considering not issuing temporary layoffs because of the CERB.

We recommend that employers seek legal advice to obtain clarity on this issue.

Amendments to the *Employment Insurance Act*

The COVID-19 Act also introduced amendments in the *Employment Insurance Act* to waive the requirement to provide a medical certificate to access EI sickness benefits. These amendments will last until September 30, 2020, at which point the requirements for medical certificates will be reinstated.

Amendments to the *Canada Labour Code*

Finally, the COVID-19 Act has implemented legislative changes to the *Canada Labour Code* (the Code). These impact only federally-regulated workplaces. In other words, if you are a provincially-regulated employer, these changes do not apply to your business. Highlights include:

New temporary leave of absence for COVID-19

Federally-regulated employees will be entitled to up to 16 weeks of unpaid, job-protected leave if they are unable to work for reasons related to COVID-19, including, but not limited to:

- If they are being quarantined or asked to self-isolate; or
- If they are required to provide care to a family member as a result of COVID-19.

To take this leave of absence, employees must provide written notice to their employer as soon as possible and advise how long they intend to be on leave. In the event the anticipated length of the leave changes, the employee must let their employer know.

Medical certificates are not required. Employers may, however, require employees to provide a written declaration to support the reasons for the leave, as well as any change to the anticipated length of the leave.

The leave related to COVID-19 is to be repealed on October 1, 2020.

New quarantine leave

As of October 1, 2020, and to replace the leave related to COVID-19, federally-regulated employees will be entitled to an unpaid, job-protected leave of absence of up to 16 weeks as a result of quarantine.

Temporary removal of medical certificate requirements

Until September 30, 2020, federally-regulated employees may use compassionate care leave, critical illness leave, or medical leave without providing a medical certificate.

With respect to critical illness leave, employees are also not required to provide documentation to support the reasons of the leave or the change in the length of leave.

These changes to the Code are not retroactive.

For advice with respect to employment issues arising from COVID-19, please get in touch with our team listed below, who are ready and available to assist with navigating through these unprecedented times. BLG has created a COVID-19 Resource Centre to assist businesses on a variety of topics, including investment management, leasing, contractual risks, public disclosure requirements and criminal law.

By

Michelle S. Henry, Odessa O'Dell

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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