

THE CANADA EMERGENCY RESPONSE BENEFIT (CERB):

- As part of Canada's COVID-19 Economic Response Plan (details available here <https://www.canada.ca/en/department-finance/economic-response-plan.html>), the federal government introduced a new form of financial assistance for individuals who have stopped working due to COVID-19.
- CERB replaces the previously announced Emergency Care Benefit and Emergency Support Benefit.
- The benefit provides a taxable benefit of \$2,000.00 per month for up to 4 months for eligible individuals.
- Amendments to the program were announced (found here <https://pm.gc.ca/en/news/news-releases/2020/04/15/prime-minister-announces-expanded-access-canada-emergency-response>) on April 15, 2020 to expand the CERB eligibility criteria.
- CERB is available to individuals:
 - Residing in Canada, who are at least 15 years old;
 - Who have stopped working because of reasons related to COVID-19;
 - Who are eligible for Employment Insurance regular or sickness benefits;
 - Who have exhausted their Employment Insurance regular benefits between December 29, 2019 and October 3, 2020;
 - Who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and,
 - Who have not quit their job voluntarily.
- There is no longer a requirement that individuals must have stopped working entirely. Rather, an individual can now earn up to \$1,000.00 per month in employment/self-employment income and remain eligible for the benefit.
- When submitting their first claim, an individual cannot have earned more than \$1,000.00 employment/self-employment income for 14 or more consecutive days within the 4-week benefit period of their claim.
- When submitting subsequent claims, an individual cannot have earned more than \$1,000.00 in employment/self-employment income for the entire 4-week period of their new claim.
- The \$1,000.00 of permitted employment/self-employment income includes things like tips, non-eligible dividends, honoraria (e.g. nominal amounts paid to emergency service volunteers), and royalties (e.g. paid to artists). Pensions, student loans and bursaries are not employment income, and as such, are not included in the \$1,000.00 threshold.
- Applications for anyone seeking income assistance due to COVID-19 (i.e. EI regular/sickness benefits or CERB) are being processed through a single portal (found here <https://www.canada.ca/en/services/benefits/ei/cerb-application.html>), which will direct the applicant to the appropriate form (i.e. the CRA form for those who would not otherwise be EI eligible, or a form through Service Canada).

- By answering a few simple questions, the applicant will be directed to apply for the benefit best suited to their situation.
- The federal government has stated that individuals who are *already* receiving EI benefits (regular or sickness) would continue to receive their benefits and should not apply for CERB. However, if their EI benefits end before October 3, 2020, they could apply for CERB if they are unable to return to work due to COVID-19.
- Likewise, applicants who have already applied for EI but whose applications have not yet been processed do not need to re-apply. Applicants who applied for EI on March 15, 2020 or later, will have their application processed through CERB. Individuals who are eligible for regular EI or sickness benefits would still be able to access normal EI benefits, if still unemployed after the 16 week period covered by CERB.
- There is no waiting period, and applicants will receive their benefit within 10 days of applying.
- For more information how to apply, applicants can visit these links (which, as of April 15, 2020 have not been updated to reflect the expansion of the CERB program):
 - o <https://www.canada.ca/en/services/benefits/ei/cerb-application/questions.html>
 - o <https://www.canada.ca/en/services/benefits/ei/cerb-application.html>
 - o <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra.html>

EI FOR SICKNESS & QUARANTINE

- EI sickness benefit claims are now being delivered as part of the CERB program.
- Employees eligible for sickness benefits should apply for CERB here:
<https://www.canada.ca/en/services/benefits/ei/cerb-application.html>
- Outside of CERB, EI sickness benefits provide for up to 15 weeks of income replacement for eligible claimants who are unable to work due to illness, injury or quarantine.
- Typically, to be eligible for EI sickness benefits, the employee must:
 - o Be unable to work for medical reasons (including quarantine);
 - o Show that their regular weekly earnings from work have decreased by more than 40% for at least one week; and
 - o Have accumulated 600 insured hours of work in the 52 weeks preceding the start of their claim, or since the start of their last claim (whichever is shorter).

- There is normally a 1 week waiting period in place for EI claimants (i.e. claimants are not paid for their first week off work). However, in its initial response to the COVID-19 pandemic, the federal government waived the 1 week wait period for claimants of EI sickness benefits who had the requisite interruption of earnings, and were quarantined:
 - By imposition under the laws of Canada or a province;
 - By imposition of a public health official for the health and safety of the public at large; or
 - By recommendation by such an official for the health and safety of the public at large and that the claimant was asked by their employer, a medical doctor, a nurse or a person in authority to place themselves under quarantine.
- The federal government has also waived the requirement that claimants produce a medical certificate if they are placed under quarantine in the above-noted circumstances.
- It has also been noted that people who cannot complete their claim for EI sickness benefits due to quarantine may apply later and have their EI claim backdated to cover the period of delay.
- The waiver of the 1 week waiting period and requirement for a medical certificate for quarantine benefits has been in effect since March 11, 2020, and is at present set to expire on September 7, 2020.
- For information related to sickness benefits, applicants can visit this page <https://www.canada.ca/en/services/benefits/ei/ei-sickness.html>

SOURCES:

- <https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html#employment-insurance>
- <https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>
- <https://www.canada.ca/en/services/benefits/ei/ei-sickness.html>

EI DUE TO LAY-OFF

- Though anyone who has stopped working due to COVID-19 is being directed to apply for CERB, there may be situations where an employee will instead receive regular EI benefits. For example, if an employer issues a temporary lay-off (e.g. one week) and recalls employees at a reduced schedule after the one week lay-off, that employee will qualify for EI (if they meet the eligibility criteria).
- By accessing the application portal (found here <https://www.canada.ca/en/services/benefits/ei/cerb-application.html>), applicants will be directed to the benefit best suited to their needs.
- The federal government has not waived the 1 week waiting period for regular EI benefits.
- Employees applying for regular EI benefits must meet the EI eligibility criteria.

- Employees may be eligible for EI if they:
 - Have lost their job (to no fault of their own);
 - Have been without work and without pay for at least seven consecutive days in the last 52 weeks; and
 - Have worked the minimum number of hours required to be eligible for EI benefits.
- Employees can consult this source (found here <https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/eligibility.html>) to determine if they are eligible for EI.

CAN AN EMPLOYEE WORK WHILE COLLECTING EI?

- Under normal circumstances, employees can work while on EI, however, they must first qualify for EI in order to do so. What this means is, the employee must be off work (have an interruption in earnings) for **at least 7 days** prior to doing any work. If the employee works after the 7 day waiting period, 50 cents of every dollar they earn will be set-off against their EI entitlement, up to a maximum of 90% of their previous weekly earnings.
- Generally speaking, when an employee is recalled to work, their entitlement to EI will end. However, if an employer wishes to recall employees with some reduction of their normal hours and pay, in our view, the employee is likely eligible to continue claiming EI while working at a reduced schedule for the same employer. This type of circumstance generally only happens during maternity leave or compassionate care leave, or after a return from disability leave. However, in our view, it would apply equally here, as the EI Act and Regulations do not appear to create an exception for claimants working on EI for the employer who issued in the lay-off.
- It is important to note that employees must report earnings and work hours for each week they work, in the week the work occurred. Likewise, employees are not eligible to receive EI benefits if they work a full week, regardless of the amount they earn.

WHAT ABOUT CERB?

- With the recent changes to the program, a CERB recipient can now perform some work, providing they do not earn more than \$1,000.00 per month. Recipients may be required to provide documentation to support their eligibility at a later date.

SOURCES:

<https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/while-receiving.html>

<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/working-while-claim.html>

<https://www.canada.ca/en/services/benefits/ei/cerb-application.html>

<https://www.canada.ca/en/services/benefits/ei/cerb-application/questions.html>

ISSUING THE ROE

ESDC has provided the following direction with respect to completing the ROE.

- If your employees are directly affected by the coronavirus (COVID-19) and they are no longer working, you must issue a Record of Employment (ROE).
- When the employee is sick or quarantined, use code D (Illness or injury) as the reason for separation (block 16). Do not add comments.
- When the employee is no longer working due to a shortage of work because the business has closed or decreased operations due to coronavirus (COVID-19), use code A (Shortage of work). Do not add comments.
- When the employee refuses to come to work but is not sick or quarantined, use code E (Quit) or code N (Leave of absence), as appropriate. Avoid adding comments unless absolutely necessary.

SOURCE:

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>

TOPPING UP EI (SUPPLEMENTARY UNEMPLOYMENT BENEFIT PLAN)

- The employer can pay an EI top up by administering a Supplementary Unemployment Benefit Plan ("SUBP")
- A SUPB is a plan to increase employees' weekly earnings when they are unemployed due to a temporary stoppage of work, training, illness, injury or quarantine.
- Payments from plans that are registered with Service Canada are not considered earnings and are not deducted from EI benefits (pursuant to subsection 37(1) of the EI Regulations).
- In receiving a top-up, an employee's combined weekly income which includes both EI benefits and wages, cannot exceed 95% of their normal weekly earnings.
- Employers can consult this guide (found here <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/supplemental-unemployment-benefit.html>) for information on SUBP requirements and the registration process.
- Section 37(2) of the EI Regulations require that a SUBP:
 - o identify the group or groups of employees covered by the plan;
 - o cover any period of unemployment by reason of a temporary stoppage of work, training, illness, injury, quarantine or any combination of such reasons;

- o require employees to apply for and be in receipt of benefits in order to receive payments under the plan but may provide for payments to an employee who is not in receipt of benefits for the reason that the employee
 - (i) is serving the waiting period,
 - (ii) has insufficient hours of insurable employment to qualify for benefits, or
 - (iii) has received all of the benefits to which the employee is entitled;
- o require that the combined weekly payments received from the plan and the portion of the weekly benefit rate from that employment do not exceed 95 per cent of the employee's normal weekly earnings from that employment;
- o requires that payments under the plan be financed by the employer and that the employer keep separate accounts for those payments;
- o require that, on termination of the plan, all remaining assets revert to the employer or be used for payments under the plan or for administrative costs of the plan;
- o require that the plan be submitted to the Commission prior to its effective date and that written notice of any change to the plan be given to the Commission within 30 days after the effective date of the change;
- o provides that the employees have no vested right to payments under the plan, except to payments during a period of unemployment specified in the plan; and
- o provide that payments in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan.

WHAT ABOUT CERB?

- At present, there is no clear indication as to whether an employer can top-up a CERB payment, as it can with EI. Prior to the changes to CERB (which now permit an individual to earn up to \$1000.00 per month while receiving the benefit), the available information seemed to suggest that a top-up was not permitted, since a CERB recipient could have no other employment income.
- However, even though recipients can now receive some level of income, there is no information about whether any employer paid top-up would be subject to any similar rules to the SUBP.

SOURCES:

<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers-supplemental-unemployment-benefit.html>

WORK-SHARING PROGRAM

- An employer can keep employees working with reduced hours and allow them to collect EI by applying for a work-sharing agreement.
- A work-sharing agreement is designed to help employers and employees avoid layoffs when there is a temporary decrease in the business activity beyond the control of the employer. It provides income support to employees eligible for EI benefits who work a temporarily reduced work week while their employer recovers.
- It is a 3-party agreement involving employers, employees (or union) and Service Canada. As part of the program, employees must agree to a reduced schedule of work and to share the available work over a period of time.
- A minimum of two employees is required for a work-sharing agreement.
- For employers directly or indirectly experiencing a downturn in business because of COVID-19, the federal government has introduced the following temporary special measures - effective March 15, 2020 to March 14, 2021, and not limited to one specific sector or industry:
 - Extension of the maximum possible duration of an agreement from 38 weeks to 76 weeks
 - Mandatory cooling off period has been waived for employers who have already used the work-sharing program so that eligible employers may immediately enter into a new agreement
 - Reduce the requirement and expand eligibility to employers affected by accepting business who have been in business for only 1 year rather than 2, and eliminate the burden of having to provide sales/production figures at the same time
 - Reduce the previous requirements for a recovery plan to a single line of text within the application form
- Work-sharing agreements and documentation must be submitted 10 calendar days prior to the requested start date and documentation (a change from the regular 30 day timeline). This change in timeline aims to reduce Service Canada's processing time to 10 calendar days.
- In Western Canada and the Territories, applications can be sent to: EDSC.WT.WS-TPESDC@servicecanada.gc.ca
 - Employers must submit:
 - The Application:
<https://catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=EMP5100>
 - "Attachment A" (the work-sharing unit form):
<https://catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=EMP5101>
(formatting)

Employers must meet certain criteria in order to be eligible for a work-sharing program, some of which is summarized below. More information is available at the links copied below.

Work reduction:

- A work-sharing unit must reduce its hours of work by at least 10% (one half day) to 60% (three days). The reduction of hours can vary from week to week, as long as the average reduction over the course of the agreement is from 10% to 60%.
- Work-sharing agreements must have a minimum duration of 6 weeks.
- The proposed reduction in work hours should correspond with the number of anticipated temporary layoffs. For example, if an employer submits a request for a 40% reduction in the hours of work, the employer must indicate there is a need to layoff approximately 40% of the workforce. Workforce is defined as all employees working at the location of the business and who are working in the section(s) of the company affected by the shortage of work.

To be eligible for a work-sharing agreement, your business must:

- be a year-round business in Canada for at least 1 year
- be a private business, a publicly held company or a not-for-profit organization, and
- have at least 2 employees in the WS unit

Your business is not eligible for work-sharing if it is experiencing a reduction in business activity due to:

- a labour dispute
- a seasonal shortage of work
- a pre-existing and/or recurring production slowdown, or
- the decrease in business activity is due to a recent increase in the size of the workforce

To be eligible for work-sharing, your employees must:

- be year-round, permanent, full-time or part-time employees needed to carry out the day-to-day functions of the business (your "core staff")
- be eligible to receive EI benefits, and
- agree to reduce their normal working hours by the same percentage and to share the available work

Employees that are not eligible for work-sharing include:

- seasonal employees and students hired for the summer or a co-op term
- employees hired on a casual or on-call basis, or through a temporary help agency
- employees who are needed to help generate work and/or who are essential to the recovery of the business. For example:
 - o senior management
 - o executive-level marketing/sales agents
 - o outside sales representatives
 - o technical employees engaged in product development
 - o employees who hold more than 40% of the voting shares in the business

SOURCES:

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus/employers-overview.html>

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus/employers-factsheet.html>

IMPORTANT CHANGES TO EMPLOYMENT STANDARDS LEGISLATION:***The Employment Standards Regulation***

- In the usual circumstances, pursuant to section 23(1) of the Regulation, an employee who is laid off for 8 weeks or more within a 16 week period is deemed to be terminated (triggering *The Employment Standards Code's* (found here <https://web2.gov.mb.ca/laws/statutes/ccsm/e110e.php>) termination notice provisions), unless by agreement:
 - the employer continues to pay wages to the employee, or
 - the employer continues to make payments for the benefit of the employee to a pension plan or group insurance plan.
- However, on March 26, 2020, the Regulation was amended, retroactive to March 1, 2020 (until the state of emergency declared under *The Emergency Measures Act* (Manitoba) is terminated) to temporarily suspend the application of this provision to layoffs occurring within this time frame. As a result, an Employer now can lay-off an employee for an indefinite period of time; if the employee is not recalled before the effective expiry date of this amended Regulation, then a termination would be deemed to have taken place and pay in lieu of notice (as well as any outstanding wages and vacation pay) would be owing.
- However, in the absence of a contractual entitlement to do so, it is important to also note that an employer who issues a lay-off may risk a constructive dismissal claim.
- For more information related to employee lay-offs, contact a member of our Labour and Employment Team.

The Employment Standards Code

- Manitoba is introducing a new category of protected leave: Public Health Emergency Leave (found here https://www.gov.mb.ca/labour/standards/doc_public_health_emergency_leave_COVID-19_factsheet.html)
- This is a temporary job-protected, unpaid leave for employees who are unable to work for circumstances related to the COVID-19 pandemic, in the following circumstances:

- o the employee is in quarantine, isolation or self-isolation in order to follow guidance or directives issued by specific public health authorities for reasons related to COVID-19;
 - o the employee is under medical examination, supervision or treatment related to COVID-19;
 - o the employee must comply with or is subject to an order made under *The Emergency Measures Act* or *The Public Health Act* as a result of COVID-19;
 - o the employee is providing care, support or assistance to a family member as a result of COVID-19, including but not limited to, school and daycare closures;
 - o the employer directs the employee not to work because the employer is concerned about the employee's exposure to others;
 - o the employee is directly affected by travel restrictions and cannot reasonably be expected to travel to their workplace.
- Employers are not permitted to request a medical certificate to verify an employee's eligibility to take the leave.

COVID-19 AND WCB:

- The Workers Compensation Board (WCB) will consider COVID-19 related claims on their individual merits, with consideration to the specific facts and circumstances of each case.
- A claim will be accepted when the WCB is able to determine that the worker's condition more likely than not arose out of and in the course of employment.
- Generally speaking, COVID-19 is not likely to be compensable given the community transmission that we are likely to see in Manitoba.
- However, if it can be shown that a person's employment put them at a greater risk of contracting the illness (i.e. that the worker likely came into contact with another person with a confirmed case of COVID-19, and has also been diagnosed with a confirmed case of COVID-19), it is possible that a claim may be accepted.
- That said, WCB will also consider whether the worker was using appropriate personal protective equipment when they came into contact with that individual, and whether they were following exposure protocols.
- For more information on COVID-19 related WCB claims, visit this page <https://www.wcb.mb.ca/how-the-wcb-is-responding-to-covid-19>.

PRIVACY IN THE WORKPLACE:

- If an employee in your workplace has contracted or been exposed to COVID-19, you may be inclined to share that information with your workforce.
- However, despite an employer's obligation to provide a safe workplace, there are privacy laws which have an impact on the level of information which can be disclosed.
- For more information, visit our Privacy resource page (found here <https://www.pitblado.com/privacy-time-pandemic>), or contact a member of our Labour and Employment team.

WORK REFUSALS AND COVID-19

- Under *The Workplace Safety and Health Act*, workers always have a right to refuse work that they believe on reasonable grounds constitutes a danger to their health or safety, or the health and safety of another individual.
- The challenge during these times is assessing whether or not a worker is being asked to perform "dangerous" work.
- Danger is distinct from "risk", and typically means that the worker is exposed to a hazard that is generally unusual the worker's normal working conditions/tasks or the health/physical condition of the worker increases the risk, that the hazard is likely to result in serious injury or illness, and that reasonable controls have not been put in place to reduce or eliminate the risk.
- In other words, though a fact-dependent inquiry, when a workplace follows recommended protocols and establishes safe practices (which will depend on the workplace, but may include the provision of personal protective equipment, ensuring social distancing guidelines are adhered to, providing hand-washing stations etc.), the worker may be faced with a higher threshold in establishing that their work poses a "danger" to their health and safety.
- *The Workplace Safety and Health Act* establishes a protocol that must be followed by a worker when they refuse work on the basis that it poses a danger (which begins with informing the worker's direct supervisor, and ends with contacting Workplace Safety and Health if the matter cannot be resolved internally). It also outlines the employer's obligations when faced with a work refusal (which can include keeping a worker on payroll and benefits during the refusal or re-assigning that worker to another position).
- General information about the work refusal process is available here <https://www.gov.mb.ca/covid19/infomanitobans/workplaces.html>. For more information on how to respond to a work-refusal, contact a member of our Labour and Employment team.

THE CANADA EMERGENCY WAGE SUBSIDY (CEWS)

- As part of Canada's COVID-19 Economic Response Plan (found here <https://www.canada.ca/en/department-finance/economic-response-plan.html>), the federal government has introduced new measures to assist businesses retain employees and re-hire workers previously laid off, by providing a wage subsidy.
- Updated information about the federal wage subsidy program and how it will be administered is available here <https://www.canada.ca/en/department-finance/economic-response-plan/wage-subsidy.html>.
- In brief, the federal government will provide up a 75% wage subsidy for up to 12 weeks, for businesses retroactive to March 15th.
- On April 8, 2020 amendments to the program were announced. Now, to qualify for the subsidy, employers only need to show a reduction of revenue of 15% in March. For April and May, they need to show a reduction of 30%.
- Eligible employers include: individuals, taxable corporations, and partnerships consisting of eligible employers, non-profit organizations and registered charities.
- Public bodies are not eligible for the subsidy (including municipalities and local governments, crown corporations, wholly owned municipal corporations, public universities, college, schools and hospitals).
- The reduction of revenue can be calculated one of two ways:
 - based on a comparison with same month in the previous year (i.e. comparing March 2020 to March 2019), or
 - by using the average revenue for January and February of 2020, and comparing that with March, April and May of 2020.

The method chosen must be the method utilized going forward.

- Notably, the program now includes a 100% refund for certain employer paid contributions to EI and CPP, for eligible employees for each week throughout which they are on leave with pay, and for which the employer is eligible to claim the subsidy for those employees. The announcement states that an employee will generally be considered to be on leave with pay throughout a week if that employee is paid by the employer during that week, but does not perform any work. The refund would not be available for eligible employees that are on leave with pay for only a portion of a week.
- Eligible employers can apply through the CRA's "My Business Account" portal, and more information about the application process is expected to be announced in the coming days.

SOURCES:

<https://www.canada.ca/en/departement-finance/economic-response-plan/wage-subsidy.html>

https://www.canada.ca/en/departement-finance/economic-response-plan.html#wage_subsidies

MANITOBA'S SUPPORT FOR BUSINESSES

- The “Manitoba Protection Plan” includes a number of new measures to assist businesses, the details of which can be viewed here <https://www.gov.mb.ca/covid19/business/index.html>.
- In particular, the plan includes:
 - launching a new call centre to help businesses, non-profits and charities to connect with support programs;
 - extending the April and May tax filing deadlines for Retail Sales Tax until June 22, 2020 for small and medium businesses with monthly RST remittances of no more than \$10,000;
 - not charging interest or penalties for Manitoba Hydro, Centra Gas, Workers Compensation Board and Manitoba Public Insurance (MPI);
 - not disconnecting customers of Manitoba Hydro and Centra Gas;
 - relax ordinary practices on policy renewals and collections at MPI;
 - not charge interest on Manitoba Liquor and Lotteries receivables from restaurants, bars and specialty wine stores; and
 - not charging interest on education property taxes.
- The call centre, run by 24-7 Intouch will assist businesses in accessing programs, including CEWS. Businesses seeking the assistance of the call centre are being asked to register at the above link. The centre will contact businesses directly once it is operational.
- Additional measures to support Manitoba businesses are expected to be announced in the coming days.

Please do not hesitate to contact your relationship partner or lawyer if you have any questions or if we can be of assistance in guiding you through these new challenges.

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This article represents general information and is not legal advice. Please contact us if you would like legal advice that is tailored to your particular circumstances. We would be happy to help.