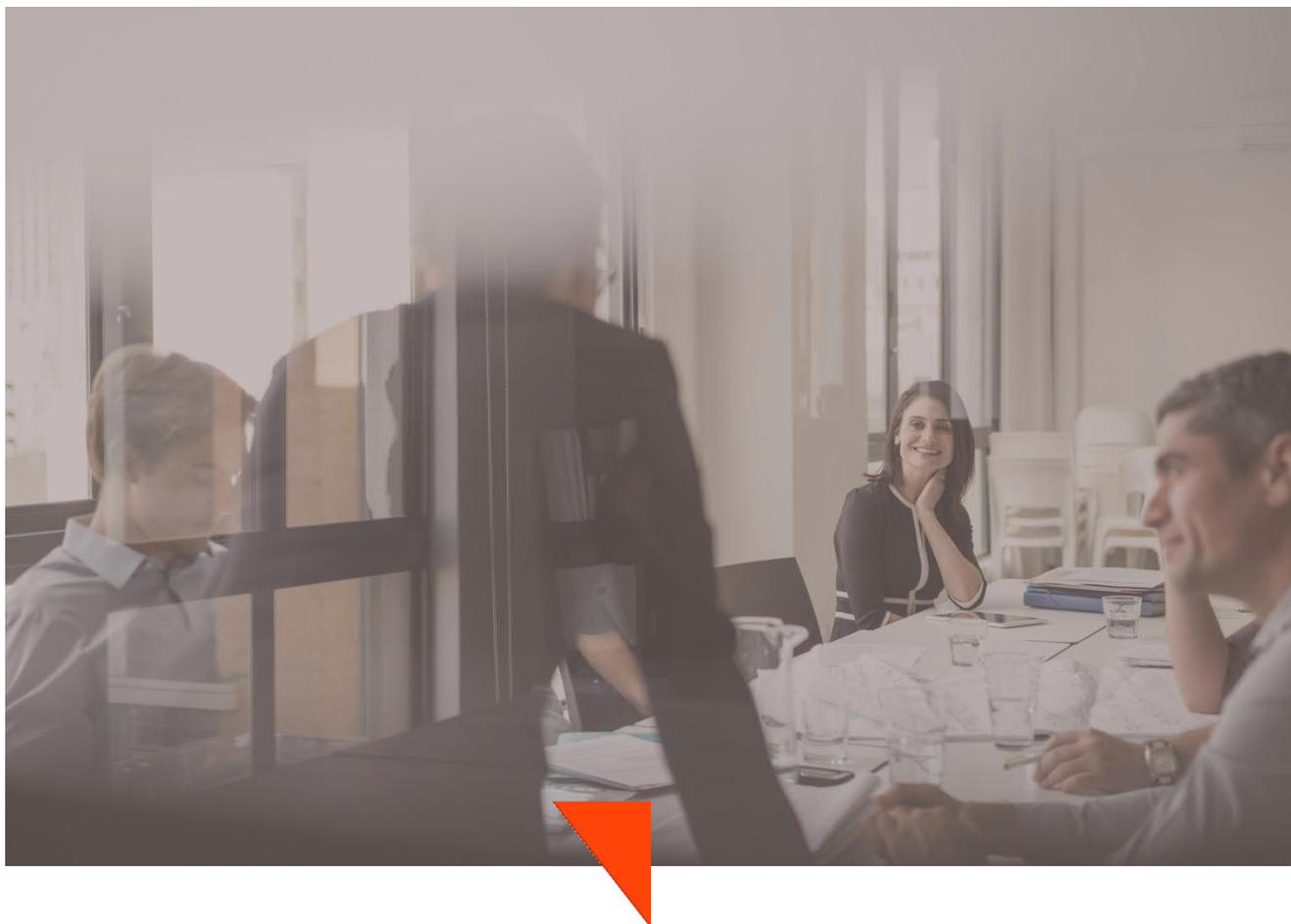


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COVID-19 Employment Update - A Review of Workforce Planning in the Pandemic (so far)

Canadian Olympic Committee NSOs Webinar

May 6, 2020

COVID-19 Employment Update

A Review of Workforce Planning in the Pandemic (so far)

May 6, 2020



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Opening Remarks & Introduction



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▼ AGENDA

Opening Remarks & Introduction [Marc-André Fabien](#)

- 1. Federal Relief Programs**
[Christopher Steeves](#)
[Martin Legault](#)
- 2. Workforce Planning Options**
[Erin Porter](#)
[Raphael Buruiana](#)
- 3. What Comes Next**
[Arif Chowdhury](#)
- 4. Q&A All Speakers**
[Marc-André Fabien](#)

Closing Remarks [Erin Porter](#) and [Marc-André Fabien](#)

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▼ Federal Relief Programs



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Canada Emergency Response Benefit



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Introduction

CERB Overview



Announcement – On March 25, 2020, Finance Minister Bill Morneau announced the enactment of the Canada Emergency Response Benefit (the “**CERB**”).



The Measure – The CERB is a taxable benefit that provides \$2,000 every four weeks for up to four months to workers who lose their income as a result of the COVID-19 pandemic.



Royal Assent – The legislation implementing the CERB received Royal Assent after a special sitting of Parliament on March 25, 2020.

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Requirements

CERB Eligibility



Requirements – The CERB is available to workers who meet all of the following requirements:

1. live in Canada and are at least 15 years old
2. stopped working for at least 14 consecutive days because of COVID-19 or are eligible for EI regular or sickness benefits
3. have not voluntarily quit their job
4. had income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application.

Subject to specific conditions, workers may be permitted to earn up to \$1000 per month while collecting the CERB

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Applications and Additional Details

CERB Applications



Employment Insurance - Effectively replaces Employment Insurance for the period between March 15 to October 3, 2020



Application Process - Applications for the CERB are made through the Canada Revenue Agency (CRA) website



Second Benefit Period - Applications for the second monthly benefit period are now possible



Payments are Taxable Benefits - CERB payments are taxable benefits for the worker who receives them

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Canada Emergency Wage Subsidy



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Introduction

CEWS Overview



Announcement – On April 1, 2020, Finance Minister Bill Morneau announced the general parameters of the new Canada Emergency Wage Subsidy (the “**CEWS**”).



The Measure – The CEWS provides a monthly subsidy of up to 75% of salary, wages and other remuneration paid by eligible employers (max. \$847/week/employee) for 12 weeks and possibly for longer.



Royal Assent – The legislation implementing the CEWS received Royal Assent after a special sitting of Parliament on April 11, 2020.

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Requirements

CEWS Eligibility



Requirements – In order to determine whether an employer qualifies for the CEWS, the employer must determine whether:

1. **Eligible Entity**– it is an “eligible entity”; and
2. **Revenue Drop Test** - the employer has suffered at least a 15% decrease in gross revenues in March, 2020 or at least a 30% decrease in gross revenues during the months of April, and/or May, 2020.

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Eligible Entity

CEWS Eligibility



Eligible – The following types of persons (and partnerships/organizations) are eligible entities:

-  individuals and taxable corporations;
-  partnerships consisting of only eligible employers; and
-  certain non-profit organizations and registered charities.



Business Number – eligible entities must have a business number with a payroll account registered with the Canada Revenue Agency on March 15, 2020.



Non-eligible – Certain public bodies are not eligible entities. This includes municipalities, local governments, Crown corporations, public universities, colleges, schools, and hospitals.

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30% Revenue Drop Test

CEWS Eligibility



Revenue Drop – Only eligible entities who suffer a decrease in gross revenue of at least 15 percent in March 2020, or at least 30 percent in April 2020 and/or May 2020 will qualify.



Reference Periods – To determine eligibility for the CEWS for each qualifying period, the qualifying gross revenue of the “current reference period” is compared to the qualifying gross revenue in the “prior reference period”.



Qualifying Revenue – An eligible entity’s “qualifying revenue” for these purposes, is the eligible entity’s in-flow of cash, receivables or other consideration arising in the course of the ordinary activities of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity in the particular period – in Canada but *excludes* (i) extraordinary items, and (ii) amounts derived from non-arm’s length sources.

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Qualifying Periods and Current Reference Periods

CEWS Eligibility



Qualifying Periods – A qualifying entity can apply for a wage subsidy in each qualifying period. Currently, there are three qualifying periods but the Minister of National Revenue may add additional qualifying periods (up to and including September, 2020). The initial qualifying periods and the current reference period for each qualifying period is shown below:

Number	Qualifying Period	Current Reference Period
Period 1	March 15 - April 11, 2020	March 2020
Period 2	April 12 - May 9, 2020	April 2020
Period 3	May 10 - June 6, 2020	May 2020

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Past Reference Periods

CEWS Eligibility



Past Reference Period – The past reference period for each qualifying period is based on monthly revenues in 2019 (shown below) except where either (i) the business was not operating on March 1, 2019, or (ii) where the eligible entity elects to use the “Jan/Feb Average” for each qualifying period.



Jan/Feb Average – Generally speaking, a eligible entity can elect to use as its past reference period the amount that is equal to the aggregate of gross revenues for January and February 2020, divided by two. If this election is made, it applies for qualifying periods 1, 2 and 3.

Number	Qualifying Period	Past Reference Period
Period 1	March 15 - April 11, 2020	March 2019 or Jan/Feb Average
Period 2	April 12 - May 9, 2020	April 2019 or Jan/Feb Average
Period 3	May 10 - June 6, 2020	May 2019 or Jan/Feb Average

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Special Rules

CEWS Eligibility



Deeming rule – Where an eligible entity meets the revenue drop test in respect of a particular qualifying period, then the eligible entity is deemed to meet the conditions of the revenue drop test in respect of the immediately following qualifying period.



Anti-avoidance – Generally, the qualifying revenue of an eligible entity for a current reference period for a qualifying period may be deemed to be equal to the qualifying revenue of the eligible entity for the relevant prior reference period, if (a) the eligible entity participates in a transaction or event or takes an action that reduces its qualifying revenues; and (b) one of the main purposes of such transaction, event, series or action is to cause an eligible entity to qualify for the subsidy in respect of that qualifying period.

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Special Rules

CEWS Eligibility



NPOs and Charities – For registered charities and non-profit organizations, qualifying revenue will include most forms of revenue, excluding revenues from non-arm's length persons. These organizations may choose whether or not to include revenue from government sources as part of the calculation. Once chosen, the same approach applies throughout the program periods.



Captive entities – Where ninety percent or more of an entity's gross revenue is derived from a non-arm's length person or partnership, it may be possible for such entity to qualify under the revenue drop requirement under special rules.



Affiliated Groups – An affiliated group of eligible entities may compute its qualifying revenue on a consolidated basis provided each member of the group determines its revenue on such basis.

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Amount per Employee

Amount of Subsidy



Calculation – The CEWS for a given employee, with respect to eligible remuneration paid in respect of a week of employment during a qualifying period, is equal to the greater of the following amounts:

1. 75% * remuneration paid to the employee in respect of that week, up to a maximum of \$847; and
2. the lesser of: (i) the amount of remuneration paid to the employee in respect of that week (maximum of \$847); and (ii) 75% * the employee's pre-crisis weekly remuneration ("baseline remuneration").



Add-on in respect of paid-leave – The CEWS is increased by the amount of employer's premium under the *Employment Insurance Act*, as an employer's contribution under the Canada Pension Plan or under a provincial pension plan, or as an employer's premium under the parental insurance plan in Quebec, for weeks in a qualifying period when an eligible employee is on paid leave.

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Additional Details

Amount of Subsidy



Eligible Employee – An eligible employee is an individual who is employed in Canada and who has not been without remuneration for 14 or more consecutive days in that qualifying period. In contrast, the Canada Emergency Response Benefit requires that worker not receive more than \$1,000 income for a 14 consecutive day period. An employee who qualifies for the CERB will generally be excluded for the CEWS for a particular qualifying period, and vice versa.



Eligible Remuneration – This may include salary, wages, and other remuneration including commissions (this does not include severance pay, stock option benefits, or certain other benefits).



Baseline Remuneration – Means the average weekly eligible remuneration paid to the eligible employee by the eligible entity during the period that begins on January 1, 2020 and ends on March 15, 2020, excluding any period of 7 or more consecutive days for which the employee was not remunerated.

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Amount per Employee

Amount of Subsidy



Example – If an existing or former employee earned an average of \$1,000 per week between January 1 and March 15, his or her employer may maintain employment, recall the employee from layoff, or rehire the individual at \$750 per week and claim a full subsidy on that amount, resulting in no net out-of-pocket cost. In contrast, if the employer hires a new employee at \$750 per week, the employer would only be eligible to receive a subsidy equal to \$562.50 (i.e., 75% of the amount paid).



Best Efforts – Canadian Government has reiterated that employers are expected where possible to “make their best effort” to maintain existing employees' pre-crisis employment earnings. This “expectation” is not provided for in the legislation.

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Application – An eligible employer must submit an application before October, 2020 through the “My Business Account” portal (as well as a web-based application) for **each** of the following periods:

1. March 15 - April 11, 2020;
2. April 12 - May 9, 2020; and
3. May 10 - June 6, 2020.



Timing – the application portal is now open.

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Records – While the CRA may not conduct any pre-approval of claims, an employer must still maintain records indicating revenue reductions and remuneration paid to employees.



Attestation – In order to apply for the CEWS, an individual responsible for the finances of the entity will need to attest that the information provided in the application is correct and complete in all material respects.

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Privacy – The Minister of National Revenue may communicate or otherwise make available to the public, in any manner that the Minister considers appropriate, the name of any person or partnership that makes an application for the CEWS.



10% Wage Subsidy and Work Sharing Benefits – Any benefit received by an employer under the 10% Wage Subsidy or as a work sharing benefit received by an employee for each week in a qualifying period under the *Employment Insurance Act* will generally reduce the amount of a benefit available under the CEWS.



Tax Consequences – The CEWS will be considered to be taxable government assistance for a taxable employer (however, in general, this can be offset by a deduction for employee remuneration).

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Canada Emergency Business Account



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Announcement – On April 9, 2020, Finance Minister Bill Morneau and Mary Ng, Minister of Small Business, Export Promotion and International Trade announced the Canada Emergency Business Account (the “**CEBA**”).



The Program – Eligible small business and non-profit organizations can apply for interest-free loans of up to \$40,000. If the loan is repaid by December 31, 2022, 25% of it will be forgiven, up to \$10,000. These loans are fully funded by the Government of Canada and made available through an organization’s primary financial institution.



Timing – Enrollment is currently open at most major financial institutions.

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Requirements – In order to determine whether an organization qualifies for the CEBA, an organization must meet the following requirements:



Operating Business – it is a Canadian operating business as of March 1, 2020



Payroll Registration – it has a registered payroll account with the CRA



2019 Employment Income – it has paid employment income in the 2019 calendar year of between \$20,000 and \$1,500,000

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Non-Eligible Entities

CEBA Eligibility



Non-Eligible – The following are not eligible for the CEBA:



Government Bodies – Government organizations or bodies, or entities owned by a government organization or body



Unions - Unions (or entities owned by a union)



Charitable Organizations - Charitable, religious or fraternal organizations (or entities owned by such organizations)



Political Office - Entities owned by individual(s) holding political office



Other Entities - Entities that promote violence, incite hatred or discriminate on the basis of sex, gender, sexual orientation, race, ethnicity, religion, culture, region, education, age or mental or physical disability

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CEBA Loans

CEBA Loans



Interest-free loans – Eligible businesses receive interest-free credit facilities of up to \$40,000 from primary financial institution.



Loan Forgiveness – If 75% of the balance of the loan is repaid by December 31, 2022, 25 per cent (up to \$10,000) will be forgiven.



Unpaid Balances – If the loan is not repaid by December 31, 2022, the remaining balance will be converted to a three-year term loan at 5 per cent interest.

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Enrollment Process

Enrolling for the CEBA



Application – Organizations that qualify must enroll for the CEBA with their primary financial institution



Attestation – Individuals with authority to bind the organization must agree to a statement of attestation certifying certain facts in respect of the eligibility requirements and agreeing to certain obligations including:



the organization acknowledges that the loan shall only be used by the organization to pay non-deferrable operating expenses including payroll, rent, utilities, insurance, property tax and regularly scheduled debt service and may not be used to fund any payments or expenses such as prepayment/refinancing of existing indebtedness, distributions and increases in management compensation



the organization acknowledges its intention to continue to operate its business or to resume operations

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Additional Details

CEBA Details



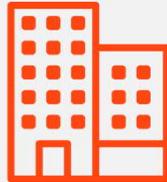
Records – Organizations receiving loans under CEBA may be audited and a 2019 T4 Summary of Remuneration Paid may be requested by government officials to support that the requirement thresholds were satisfied.



Tax Consequences – The amount of any forgiven amount will likely be considered to be taxable government assistance for a taxable borrower.

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Canada Emergency Commercial Rent Assistance



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Introduction

CECRA



Announcement – On April 24, 2020, Prime Minister Justin Trudeau announced the general parameters of the new Canada Emergency Commercial Rent Assistance (the “**CECRA**”) program.



Additional Clarifications - On April 29, 2020, the Canada Mortgage and Housing Corporation (“**CMHC**”), which is the entity responsible for administering the program, provided additional clarifications on the mechanics of the CECRA.



The Measure – The CECRA program is intended to reduce rent by 75% for small businesses that have been affected by COVID-19.



Provinces and All Territories – The Federal Government of Canada reached an agreement in principle with all provinces and territories to implement the CECRA. The provinces and territories have agreed to cost-share up to 25% of total costs and to facilitate implementation of the CECRA.

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Requirements

CECRA

1. **Eligible Property Owner** – To qualify for the CECRA, the owner of the property (the “**Eligible Property Owner**”) must

-  own property that generates rental revenue from commercial real property located in Canada;
-  own commercial real property where an impacted small business tenant (“**Impacted Small Business Tenant**”) is located;
-  have a mortgage loan secured by the commercial real property, occupied by one or more small business tenants;
-  have entered or will enter into a rent reduction agreement for the period of April, May, and June 2020 (the “**Relief Period**”), that will reduce an Impacted Small Business Tenant’s gross rent by at least 75%, and such gross rent reduction agreement must include a moratorium on eviction for the Relief Period; and
-  have declared rental income on its tax return (personal or corporate) for tax years 2018 and/or 2019.

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Requirements

CECRA

2. **Impacted Small Business Tenants** – Impacted Small Business Tenants are businesses that:

-  pay no more than \$50,000 in monthly gross rent per location (as defined by a valid and enforceable lease agreement);
-  generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis (at the ultimate parent level); and
-  have temporarily ceased operations (in essence, generating no revenues), or have experienced at least a 70% decline in pre-COVID-19 revenues.
 - The CECRA will also be available to non-profit and charitable organizations.

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Requirements

CECRA

3. **Calculation of Revenue Loss** – To measure revenue loss, small businesses can compare revenues in April, May and June of 2020 to that of the same month of 2019. They can also use an average of their revenues earned in January and February of 2020.
4. **Retroactive Effect** - The CECRA can be applied retroactively. Eligible Property Owners may still apply for assistance once the 3-month period has ended if they can prove eligibility during those months.
5. **Flexibility and Tenant Rent Credit** - Eligible Property Owners must refund amounts paid by the Impacted Small Business Tenant for the Relief Period.
 - For example, if gross rent has been collected at the time of approval for the CECRA, a credit to the Impacted Small Business Tenant for a future month's gross rent (e.g. July 2020 for April 2020) is acceptable, if agreed upon by both the Eligible Property Owner and the Impacted Small Business Tenant.

This can be a flexible 3-month period.

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Forgivable Loans

CECRA

Forgivable Loan Structure – CMHC will provide forgivable loans to Eligible Property Owners:

-  the loans will cover 50% of the gross rent owed by Impacted Small Business Tenants during the 3-month period of April, May and June 2020;
-  the Eligible Property Owner will be responsible for no less than half of the remaining 50% of the gross rent payments (paying no less than 25% of the total); and
-  the Impacted Small Business Tenant will be responsible for no more than half of the remaining 50% of the gross rent payments (paying no more than 25% of the total).
 - The rent forgiveness agreement (“**RFA**”) will include a term not to evict the tenant while the RFA is in place.
 - The forgivable loans would be disbursed directly to mortgage lenders

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No Recovery for Rent – The CECRA for small businesses loans will be forgiven if the Eligible Property Owner complies with all applicable program terms and conditions including to not seek to recover gross rent abatement amounts after the program is over.

Eligible Property Owners With No Mortgage – CMHC has stated that property owners whose properties are not mortgaged will have an alternative mechanism for commercial rent assistance to be outlined in the near future.

Deadline - August 31, 2020. The CECRA is expected to be operational by mid-May 2020.

Disbursement of Funds and Application for the CECRA Program – Details on how funds will be disbursed and the application process should be announced in the near future.

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Workforce Planning Options



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Work-Sharing Program



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Introduction

Work-Sharing



Announcement – On March 11, 2020, the Government of Canada announced that it would make available over \$1 billion for a whole-of-government response to the effects of COVID-19 on Canada’s people, economy and businesses. Part of this initiative included amendments to the Work-Sharing program



The Program – During a Work-Sharing agreement, available work is redistributed through a voluntary redistribution of hours between all employees within one or more work units. The reduction of employment must average between 10% to 60% of a normal work week over the life of the agreement. In order to help compensate for reduced income from the employer, the Canada Employment Insurance Commission (the “**Commission**”) assists EI eligible workers to collect Employment Insurance benefits for the hours missed.



Timing – The minimum duration of the program is 6 weeks. The maximum period has been extended under COVID-19 to 76 weeks.

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Additional Details

Work-Sharing



Eligible Employer – Must be a year-round business operating in Canada for at least one year. The employer must be able to demonstrate that the shortage of work is temporary and beyond their control. The decrease in business must be not be cyclical. Not-for-profit employers experiencing a shortage of work due to a reduction of business activity **and/or** a reduction in revenue levels due to COVID-19 will be eligible to access the program.



Eligible Employee – There must be a minimum of two employees that agree to reduce their workload by 10%-60%. They must be “core employees” that are essential to the recovery of the business. The employees must be eligible to receive EI benefits.



Wages – The employer pays the employee wages for the hours they worked. Employees are also paid directly from EI for the percentage of their benefit that corresponds with the percentage of the hours they missed. They will generally be paid 55% of earnings missed up to a maximum of \$573.



Benefits – Must continue to provide benefits throughout the Work-Sharing program.

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Application Process

Applying for Work-Sharing



Utilization Reports – The employer must still submit a weekly report indicating the number of hours worked by each employee.



Application – Organizations that qualify must complete the application through the Service Canada website. The employer and an employee representative (or union representative) must all sign the application, attesting that it is accurate.



The application will generally be processed in 10 calendar days.



Must provide a list of employee names with the application.



During COVID, the requirement to submit a Recovery Plan has been suspended. There is now just one sentence on the application asking how the employer intends to improve business.

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▼ Workforce Reduction Options



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▼ Workforce Reduction Options: Temporary Layoffs

1. Temporary Layoffs

- ✓ By temporarily laying off employees, employers maintain the employment relationship, allowing employees to return to work when business circumstances permit.
- ✓ However, in order to maintain the temporary nature of a layoff, employers must follow strict rules that apply to their workplace.

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▼ Workforce Reduction Options: Temporary Layoffs cont'd.

- ✓ For **unionized employees**, the rules in the applicable collective agreement will typically govern the temporary layoff and recall process.
- ✓ For **non-unionized employees**, employment standards legislation in their jurisdiction sets the temporary layoff rules.
- ✓ Another caveat for **non-unionized employees** is that an unpaid temporary layoff has historically been considered to be a constructive dismissal at common law, unless the employer has a contractual right to layoff or that right is implied by past practice.

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▼ Workforce Reduction Options: Temporary Layoffs cont'd.

- ✓ Temporary layoffs are treated in different ways across the provinces.
- ✓ In Alberta, British Columbia, Manitoba, Newfoundland, Saskatchewan (when there is a public emergency), Ontario, Quebec, and federally, where an employer temporarily lays off employees for a limited time, the employer only has to provide **pay in lieu of notice** when the layoff exceeds the temporary layoff period (varies by jurisdiction).
 - ❖ In Manitoba, any period of temporary layoff after March 1, 2020 will not be counted
 - ❖ In Alberta, the maximum days of temporary layoff after March 17, 2020 has been increased from 60 to 120 days
- ✓ Ontario and federally regulated employers are required to pay **statutory severance pay** when a layoff exceeds certain timeframes.

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▼ Workforce Reduction Options: Temporary Layoffs cont'd.

- ✓ The notice/pay in lieu of notice to which employees are entitled increases when a layoff is a **mass termination**. Threshold:
 - ❖ **More than 10 employees** are impacted within certain periods of time in Quebec, New Brunswick, Newfoundland, Nova Scotia and Saskatchewan.
 - ❖ **More than 50 employees** are impacted within certain periods of time in Alberta, British Columbia, Manitoba, Ontario and federally-regulated employers.
- ✓ **Deemed termination** after a certain period of time (varies by jurisdiction).

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▼ Workforce Reduction Options: Reduces Salary & Hours

2. Salary & Hours Reductions

- ✓ Material changes to the terms and conditions of employment will always incur some measure of legal risk.
- ✓ Subject to collective agreement obligations in a unionized workplace, alternative measures may include:
 - ❖ Short-term rotating layoffs, with no or reduced pay
 - ❖ Compressed workweeks/scheduling
 - ❖ Participation in the federal work-sharing program
 - ❖ Voluntary unpaid or reduced pay leaves of absence
 - ❖ Requiring employees to take their paid vacations

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▼ Workforce Reduction Options: Reduces Salary & Hours

- ✓ However, **there are limits** on an employer's right to make changes to working conditions through new workplace policies and measures, even in a crisis.
- ✓ When an employer unilaterally reduces an employee's wages or hours of work, it risks a claim of **constructive dismissal** from the employee.
- ✓ Courts will consider the following in determining whether a salary or hours reduction constitutes constructive dismissal:
 - ❖ How substantial the reduction (e.g. 40 hours to 15 hours/week is substantial);
 - ❖ Whether the employment contract allows employer to make unilateral changes;
 - ❖ Whether the reduction is temporary or permanent; and
 - ❖ Whether there is a valid, good faith, business justification for the reduction.

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▼ Workforce Reduction Options: Reduces Salary & Hours cont'd.

- ✓ To minimize risk of constructive dismissal, employers may make efforts to obtain written agreement from affected employees to these changes. This may be facilitated by reassuring employees these measures are only for as long as the business is impacted by the outbreak of COVID-19.
- ✓ Consider the interplay between new federal programs and the chosen reduction method – this may give rise to new duties, considerations around who should participate in a reduction, and particular impacts on eligibility and outcome of a particular plan (e.g. the federal Work-Sharing Program).

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▼ **New Leaves of Absence (COVID-19)**

- ✓ Several leaves may already apply under employment contracts, collective agreements, policies, employment standards legislation and human rights legislation.
- ✓ **New** job protected leaves have been proposed for COVID specific situations across the country.

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▼ **New Leaves of Absence (COVID-19) cont'd.**

- ✓ **British Columbia: COVID-19 Leave**
 - ❖ For employees requesting leave due to COVID-19 (e.g. diagnosis, quarantine, employer direction, family care, travel restrictions, etc.). Length of leave on case-by-case basis.
 - ❖ Employees must provide “sufficient proof” warranting leave (excluding medical notes).
- ✓ **British Columbia: New Personal Illness or Injury Leave**
 - ❖ Up to 3 days per year for absences due to employee’s personal injury or illness.
 - ❖ Employees must provide enough information to satisfy employer of illness/injury.

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▼ **New Leaves of Absence (COVID-19)** cont'd.

✓ **Alberta: COVID-19 Leave**

- ❖ Up to 14 consecutive day leave for employees subject to quarantine.
- ❖ Waives usual 90-day service and medical certificate requirements.

✓ **Saskatchewan: Public Health Emergency Leave**

- ❖ For employees who have been ordered to take specified leave by their employer, government, doctor, or provincial chief medical officer due to public health emergency.

✓ **Manitoba: Public Health Emergency Leave**

- ❖ For employees who are unable to work due to circumstances related to the COVID-19.
- ❖ Leave ends when none of the enumerated reasons apply to the employee (e.g. quarantine, family care or support, travel restrictions, etc.).

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▼ **New Leaves of Absence (COVID-19)** cont'd.

✓ **Ontario: Declared Emergency Leave**

- ❖ For employees who cannot perform duties because of a declared emergency, applicable health protection order, or a need to provide care to family member. Leave lasts for as long as the employee cannot perform the duties due to the emergency.
- ❖ Employer may require evidence reasonable in the circumstances.

✓ **Ontario: Infectious Disease Leave**

- ❖ For employees who cannot perform duties because of infectious disease (e.g. acting under emergency order, in quarantine, employer directed, family care, travel, etc.).
- ❖ The government must prescribe an infection disease for the purposes of the leave.
- ❖ Leave lasts so long as it is required by the employee, or so long as is prescribed by the government, whichever ends sooner.

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What Comes Next?



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What Comes Next?

✓ Getting out of Temporary Measures and into a **New Normal**



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▼ What Comes Next?

1. Workforce Planning and More Legal Changes?

- ✓ Employers can start planning now for return to work protocols and “ramp up” needs.
- ✓ Post-COVID-19 needs and plans might include:
 - ❖ Reviewing policies – do they account for infectious disease management and protocols from a communications (employer and employee), health and safety, and income perspectives
 - ❖ Workforce return phases
 - ❖ Communications plans
 - ❖ Working from home protocols

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▼ What Comes Next? Cont'd.

1.1 Recalling Employees

- ✓ Given the introduction of new federal programs and subsidies, many employees will begin to be recalled back to the workplace.
- ✓ Important considerations for employers:
 - ❖ Is the person being recalled while on temporary layoff?
 - ❖ Is the person being re-hired due to a deemed termination?
- ✓ Depending on the length of time, circumstances around layoff and jurisdiction, the answers to these questions will impact the recall process for both the employee and employer.

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▼ What Comes Next? Cont'd.

1.2 Absenteeism and Work Refusals

- ✓ Given the uncertain nature of the COVID pandemic, some employees may refuse to return to work.
- ✓ Employers should create a process for evaluating and addressing absenteeism:
 - ❖ Consider if the employee is eligible for a leave of absence under applicable statute.
 - ❖ Consider if there are any human rights considerations (i.e. disability, family status, etc.).
 - ❖ Consider if this is a legitimate refusal of unsafe work.
 - ❖ Consider if the employee is entitled to any other employment entitlements (i.e., under contract or workplace policies).
 - ❖ Consider if disciplinary measures are appropriate if none of the above apply.

▼ What Comes Next? Cont'd.

3. Re-Opening Facilities: General Duty

- ✓ In many jurisdictions, OHS Legislation imposes a **general duty** on organizations to protect the health, safety, and well-being workers and other attendees.
- ❖ **British Columbia:** All work must be carried out without undue risk of injury or occupational disease to any person.
- ❖ **Alberta:** Every employer shall ensure, as far as reasonably practicable, the health and safety and welfare of its workers and other persons at or in the vicinity of the work site.
- ❖ **Ontario:** Employers have a duty to take “every precaution reasonable in the circumstances”.
- ❖ **Quebec:** Every employer must take the necessary measures to protect the health and ensure the safety and physical well-being of its worker.

▼ **What Comes Next?** Cont'd.

3. Re-Opening Facilities: Considerations

- ✓ Organizations should be considering potential re-opening issues and creating specific processes or procedures to address these issues.
- ✓ Risk Exposure and Response
 - ❖ COVID-19 is an occupational health hazard. Prior to employees returning to the workplace, a risk assessment specific to the exposure hazard of COVID-19 should be conducted.
- ✓ Workplace Layout and Access Points
 - ❖ Separation of work areas to accommodate physical distancing should be considered.
- ✓ COVID-19 Training
 - ❖ Communication of acceptable behaviours upon return to the workplace is essential.

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▼ **What Comes Next?** Cont'd.

3. Re-Opening Facilities: Actions

- ✓ **Create a Re-Opening “Task Force”**
 - ❖ Assess COVID-19 related risks.
- ✓ **Implement a Re-Opening Plan**
 - ❖ Mitigate COVID-19 related risks.
- ✓ **Educate Employees and Athletes**
 - ❖ On new protocols and general health and safety precautions.
- ✓ **Align on Spread Prevention**
 - ❖ With venues, airlines and hotels.

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▼ **What Comes Next?** Cont'd.

4. **Returning to International Competition**

✓ **Inform Employees and Athletes of Potential Risk**

- ❖ Personnel should be made aware of the potential risks and best practices for their health and safety while travelling. Recognize that some employees may be at a higher risk of illness.

✓ **Observe Best Practices**

- ❖ Where international travel is unavoidable, insist upon recommended protocols and general health and safety precautions.

✓ **Consider Impact on Funding Prospects**

- ❖ Develop a plan that demonstrates how programming can continue to produce excellence while adapting to a “new normal”.

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▼ **Questions?**



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Biographies

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Areas of Expertise

Labour, Employment & Human Rights | Labour Relations and Collective Bargaining | Employment Advice and Litigation | Labour Mergers and Acquisitions | Human Rights | Canada

Education

2014, LLM, Labour and Employment Law, Osgoode Hall Law School at York University

2003, LLB, Queen's University

1998, BEd, Western University

1997, BA (Honours), Western University

Jurisdiction

Ontario, 2004

Language

English

Erin Porter's practice is focused on advising and representing employers in labour, employment and human rights matters. With considerable experience in the health care sector, Erin offers strategic and practical advice to her clients.

Erin returned to Fasken after spending more than 11 years as in-house counsel for one of Canada's largest retirement and long term care home providers. In her position as Vice President, Legal, she was responsible for providing advice on acquisitions and dispositions, accommodation, employment contracts, terminations and various other workplace matters.

Erin frequently appears before arbitrators, the Ontario Labour Relations Board, and the Human Rights Tribunal of Ontario. Although she is a passionate advocate, Erin also knows the benefit of pursuing a settlement under the right terms and conditions.

In addition to her appearance work, Erin also has experience negotiating and interpreting collective agreements, drafting employment policies and conducting workplace investigations. A former teacher, Erin loves to present

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and has been a speaker at professional and client-based seminars on topics such as the duty to accommodate, preparing for arbitration, workplace investigations, code of conduct and last chance agreements.





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Areas of Expertise

Tax Law | Cross-Border & International Tax | Executive Compensation & Benefits | Tax Litigation and Dispute Resolution | Entertainment and Media | Life Sciences

Education

1992, LLB, Queen's University

1989, BA, Queen's University

Jurisdiction

Ontario, 1994

Language

English

Christopher Steeves is the Leader of the firm's Tax group and is a member of the firm's Partnership Board. Frequently advising Canadian businesses in corporate restructurings and acquisitions, Christopher also assists with income tax aspects of complex domestic and cross-border financings, and financial instruments.

With expertise in transfer pricing and the resolution of disputes with Canadian tax authorities, Christopher has worked with clients and advisors to develop innovative, tax-efficient means of accomplishing their business objectives.

Regularly speaking at industry conferences and seminars, Christopher has been an instructor for the Canadian Bar Association's course *Tax Law for Lawyers*, "Cross-Border Tax Issues" since 2006, and taught a course on "Transfer Pricing" for the Institute of Chartered Accountants of Ontario. He taught at the University of Windsor, Faculty of Law, from 1999-2003. Christopher's expertise has been recognized by *Chambers Canada*, the *Canadian Legal Lexpert Directory*, *Best Lawyers in Canada*, *Who's Who Legal* and the *International Tax Review*.



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Areas of Expertise

International Arbitration | Securities Litigation | Litigation and Dispute Resolution | Aviation

Education

1981, LLB, Université de Montréal

Jurisdiction

Quebec, 1982

Languages

French | English

Marc-André G. Fabien, Ad. E. is a seasoned litigator and Fellow of the American College of Trial Lawyers recognized for his mastery of high-profile complex litigation. He specializes in commercial and shareholders' disputes, securities litigation and penal proceedings, and litigation involving federal, provincial and municipal bodies. In addition, he is the President of the Canadian Paralympic Committee.

Marc-André appears before all levels of courts, including the Supreme Court of Canada, the Court of Appeal of Québec, the Superior Court, various administrative tribunals, and the International Court of Arbitration for Sport. He also lectured at the Faculty of Law of the Université de Montréal, where he taught the art of advocacy.

His vast experience before the courts has earned him an excellent reputation among the judiciary. He is especially sought for his strategic expertise.

Marc-André G. Fabien, Ad.E., has written several articles on environmental law, property assessment and corporate criminal liability.

In 2012, he was awarded the title of Lawyer Emeritus (Ad.E.) by the Barreau du Québec, an honour reserved for lawyers known for their outstanding professional career, outstanding contribution to the legal profession, or outstanding social and community standing that has brought honour to the legal profession. Marc-André continues to be involved as a member of various associations, in particular a long involvement with the Canadian Paralympic Committee.

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Areas of Expertise

Insolvency & Restructuring | Human Rights | Commercial Litigation | Litigation and Dispute Resolution

Education

2009, JD, with distinction, University of Saskatchewan

2003, BSc, McGill University

Jurisdiction

Alberta, 2010

Languages

Bengali | English

Arif is a commercial litigator in the Litigation and Dispute Resolution Group and a member of the Insolvency and Restructuring Group. He has appeared at all levels of court in both Alberta and Saskatchewan as well as at the Supreme Court of Canada. Arif has experience in international arbitration and before administrative boards, including the Sport Dispute Resolution Centre of Canada.

Arif has represented large multinational corporations, product manufacturers, insurers, entrepreneurs, professional athletes, national sports organizations, franchisees and franchisors. His commercial practice includes claims for breach of contract, breach of trust, breach of fiduciary duty, claims in fraud, product liability, franchise disputes and judicial review.

Arif's practice also encompasses injunction and urgent relief work in broad-ranging areas including labour and employment, privacy and technology, and national sports organizations.

In insolvency and restructuring proceedings, Arif has represented financial institutions, secured and unsecured creditors as well as private investors in various proceedings, including contested disputes concerning the validity and priority of security interests.

Arif joined Fasken Martineau after graduating from the College of Law at the University of Saskatchewan and is an alumnus of McGill University. He volunteers regularly at Diefenbaker High School in Calgary introducing students to advocacy. Arif advises victims of discrimination on a pro bono basis.

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Areas of Expertise

Labour, Employment & Human Rights | Employment Advice and Litigation | Human Rights | Labour Mergers and Acquisitions | Labour Relations and Collective Bargaining

Education

2014, LLM, University of Cambridge

2012, LLB, Université de Sherbrooke

2012, M.B.A., Université de Sherbrooke

Jurisdiction

Quebec, 2015

Languages

French | English | Spanish

Raphaël Buruiana is a lawyer in the Labour, Employment and Human Rights Group. He specializes in labour law, representing public and private employers. Raphaël advises and represents clients in litigation, arbitration, negotiation, human rights, and labour relations cases.

Raphaël is a determined and dedicated lawyer who represented clients before the Administrative Labour Tribunal, the Court of Québec, the Superior Court, and the Court of Appeal for Quebec. While Raphaël was a student, he was recognized numerous times as one of the 10 best students in the faculty of law, in addition to earning a scholarship for excellence.

Raphaël also acts as a speaker. He is regularly invited to give training on a variety of subjects according to clients' needs and notably on questions regarding labour standards, the impact of legalizing cannabis, psychological and sexual harassment. In addition, Raphaël has been particularly focused on the issue of legalization of cannabis in Canada and its impact on the workplace. In that regard, Raphaël has co-authored the guide *How to Adapt the Workplace to the Legalization of Cannabis* for the Ordre des conseillers en ressources humaines agréés.

Before joining Fasken, Raphaël practised with a regional law firm.

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Areas of Expertise

Tax Law | Cross-Border & International Tax | Tax Litigation and Dispute Resolution | Executive Compensation & Benefits | Energy | Power | Oil and Gas | Real Estate | Acquisitions & Dispositions | Investment Properties & Joint Ventures | Real Estate Financing | Infrastructure and Projects | Mining | Life Sciences | Capital Raising and M&A in Life Sciences | Private Client Services | Financial Services | Technology, Media and Telecommunications | Transportation | Canada

Education

2002, Master's Degree, Tax Law, Université de Montréal
1998, LLB, Université de Montréal

Jurisdiction

Quebec, 1999

Languages

English | French

Martin Legault is a partner in the Tax Group. He has a diversified practice. It is particularly focused on commercial transactions and encompasses all aspects of Canadian tax law.

He advises clients on complex tax aspects related to mergers and acquisitions, reorganizations, restructurings, financings, spin-offs and divestitures. He has in-depth know-how relating to the tax aspects related to restructuring of entities experiencing financial difficulties. Before joining Fasken, he was a partner in transactional taxation at a world-class accounting firm and also served on this firm's national tax office.

He frequently participates in conferences and seminars on taxation as a presenter. With a Bachelor of Law degree and a Master's degree in tax law, Martin is a member of the Association de planification fiscale et financière (APFF) and the Canadian Tax Foundation (CTF).

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