

COVID-19:
Canada Emergency Wage Subsidy Legislation
Passes the House of Commons
April 11, 2020

The House of Commons was recalled on Saturday, April 11, 2020 to pass the [COVID-19 Emergency Response Act, No. 2](#). This Act approves the proposed Canada Emergency Wage Subsidy (CEWS) with some changes.

Eligible Employers

An eligible employer includes individuals, taxable corporations, partnerships consisting of eligible employers, non-profit organizations and registered charities.

Public bodies would not be eligible for the subsidy. This would generally include municipalities and local governments, Crown corporations, wholly owned municipal corporations, public universities, colleges, schools and hospitals.

The subsidy is available to eligible employers that see a drop of at least 15% in revenue in March 2020 and 30% for April and May.

The individual with principle responsibility for the financial affairs of the employer will be required to attest to the decline in revenue.

To qualify, the entity must have had a payroll number with the Canada Revenue Agency (CRA) on March 15, 2020.

Eligible Employees – change in definition

An eligible employee of an eligible employer is now defined as an individual employed in Canada except for those who have not been remunerated for 14 or more consecutive days within the qualifying period.

This is a change to the definition of eligible employee. It replaces the previously announced restriction that employers would not be eligible to claim CEWS for remuneration paid to an employee in a week that falls within a four-week period for which the employee is eligible for the Canadian Emergency Response Benefit (CERB).

Pre-crisis Remuneration

Pre-crisis remuneration of an eligible employee means the average weekly eligible remuneration paid to the employee by the employer from January 1 to March 15, 2020. Any period of seven or more consecutive days for which the employee was not remunerated can be excluded from the calculation.

Eligible Remuneration

Eligible remuneration includes salary, wages or other remuneration including fees, commissions or other amounts

for services of the eligible employee. It does not include stock option benefits or any amounts that can reasonably be expected to be paid or returned to the employer (or a related person). Eligible remuneration will not include any amount over the employee's baseline remuneration if there is an arrangement whereby, after the qualifying period, the eligible employee is reasonably expected to be paid a lower weekly amount.

Qualifying Revenue

An employer's revenue is defined as revenue earned in Canada from arm's length sources. Revenue can be calculated using normal accounting methods and excludes ordinary items. Employers can calculate the revenues under the accrual method or the cash method, but not a combination of both. Employers will need to select an accounting method when first applying for the CEWS and would be required to use that method for the entire duration of the program.

In cases where a group of eligible entities normally prepares consolidated financial statements, each member of the group may determine its qualifying revenue separately, provided every member of the group determines its qualifying revenue on the same basis. However, if each member of an affiliated group jointly agrees, the qualifying revenue of the group may be determined on a consolidated basis in accordance with relevant accounting principles.

If an eligible entity's qualifying revenue is greater than 90% from one or more related persons or partnerships, the entity is subject to a special calculation to determine its eligibility provided all parties agree. Essentially, the eligible entity prorates its revenue from each particular person by that individual's decline in arm's length revenue.

Amount of the Subsidy

The subsidy is calculated for each employee on eligible remuneration paid between March 15 and June 6, 2020. It is the greater of:

- 75% of the amount of remuneration paid, up to a maximum of \$847 per week; and
- The amount of remuneration paid, up to a maximum benefit of \$847 per week or 75% of the employee's pre-crisis weekly remuneration, whichever is less.

This means that employers may be eligible for a subsidy of up to 100% of the first 75% of pre-crisis wages and salaries of existing employees.

Employees that do not deal at arm's length with the employer are eligible for the subsidy. However, the subsidy amount for these employees will be limited to the eligible remuneration paid up to a maximum benefit of the lesser of \$847 per week and 75% of the employees pre crisis weekly remuneration. The subsidy would only be available in respect of non arm's length employees employed prior to March 15, 2020.

Eligible Periods

An employer's eligibility is generally determined by the change in monthly revenues, year over year, for the calendar month in which the claiming period began. Alternatively, employers can elect to compare their monthly revenues to their average revenues for January and February 2020. Employers must select an approach when first applying for the CEWS and use that approach for the entire duration of the program.

To provide greater certainty to employers, once an employer is found eligible for a specific claiming period, the employer would automatically qualify for the next period.

This table outlines each claiming period and the month in which a decline in revenue would be required to qualify for the subsidy.

	Claiming period	Required reduction in revenue	Reference period for eligibility
Period 1	March 15 – April 11	15%	March 2020 over: <ul style="list-style-type: none"> • March 2019 or • Average of January and February 2020
Period 2	April 12 – May 9	30%	April 2020 over: <ul style="list-style-type: none"> • April 2019 or • Average of January and February 2020
Period 3	May 10 – June 6	30%	May 2020 over: <ul style="list-style-type: none"> • May 2019 or • Average of January and February 2020

Refund for Certain Payroll Contributions

In addition to the CEWS, employers are entitled to a 100% refund for employer-paid contributions to Employment Insurance, Canada Pension Plan, Québec Pension Plan, and Québec Parental Insurance Plan. This refund covers 100% of these amounts for each week throughout which an employee is on leave with pay and for which the employer is eligible to claim the CEWS for that employee.

An employee will be considered to be on leave with pay throughout a week in which that employee receives remuneration but does not perform any work for the employer. The refund does not apply where an employee is on leave with pay for only a portion of the week. The refund is not subject to the weekly maximum benefit per employee of \$847.

Employers are required to continue to collect and remit employer and employee contributions for each of the programs. These amounts would be remitted to the CRA in the normal course.

Ensuring Compliance

Employers will have to keep records demonstrating their eligibility to claim the CEWS and employee remuneration. Eligible employers can apply for the CEWS through the CRA's *My Business Account* portal. Employers can also use a web-based application if they do not have a *My Business Account*.

If it is subsequently determined an employer does not meet the eligibility requirements for the CEWS, they will be required to repay amounts received under the program. Employers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS will be subject to a penalty equal to 25% of the value of the subsidy claimed; in addition, they will be required to repay the improperly claimed subsidy in full.

Interaction with Other Programs

Eligible employers may also qualify to claim the temporary 10% wage subsidy that previously introduced. Employers that are eligible for both must reduce the wages for the CEWS by the 10% wage subsidy claimed.

For employers and employees that are participating in a Work-Sharing program, the CEWS benefit would be reduced by EI benefits received by employees through the Work-Sharing program.

Government Assistance

The wage subsidy received by an employer would be considered government assistance and be included in the employer's taxable income in the year in which it is received.

Please contact your Fuller Landau engagement partner or manager for any questions. You can also visit our [COVID-19 Updates hub](#) for more information on Canadian and US government programs as well as helpful resources for business owners.



*Gordon
Tax
Fuller Landau LLP*

*Jessup
Leader*