

April 14, 2020 – Canada Emergency Wage Subsidy (CEWS)

On April 11th, 2020, the Canadian Government passed Bill C-14 into legislation and made a few changes to the initial proposal. Currently, the Bill provides for the CEWS program to end June 6, 2020, however the Minister has the power to extend the CEWS program to September 30, 2020 without having to recall Parliament. The Government is currently working on an application portal with CRA, and owners should register with CRA for *My Account* and *My Business Account* (instructions can be found on our blog). The following are some of the significant changes to the subsidy program:

Determination of revenue:

Employers are allowed to calculate their revenues under the accrual method or the cash method, but not a combination of both. Employers can choose an accounting method when first applying for the CEWS and are required to use that method for the entire duration of the program.

Revenue decline test:

Eligible employers would need to see a **15% drop** in revenue for the **March 2020** period from its business carried on in Canada earned from arm's length sources. A **drop of 30% in revenue** is required for each of **April 2020** and **May 2020**. If you met the test for one period, you are automatically eligible for the next period. For example, if you had at least 15% decline in revenue for March 2020, this qualifies you to claim wages for the period March 15 to April 11, and it also qualifies you to claim wages in the second period April 12 to May 9.

The Government introduced an additional method for comparing revenue. Under this alternative approach, employers are allowed to compare their revenue using an average of their revenue earned in January and February 2020. Employers can select a method when first applying for the CEWS and are required to use the same approach for the entire duration of the program.

Example of the alternate approach:

ABC Inc. is a start-up that started its operations last September. It reported revenues of \$100,000 in January and \$140,000 in February, for a monthly average of \$120,000. In March, its revenues dropped to \$90,000. Because revenues in March are 25% lower than \$120,000, ABC Inc. would be eligible for the CEWS for the first and second claiming period. To be eligible for the third claiming period, ABC Inc. revenues would have to be \$84,000 or less for the month of April or May (that is, 30% lower than \$120,000)

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

Clarification on non-arm's length employees:

The subsidy amount for such employees is limited to the eligible remuneration paid in any pay period between March 15 and June 6, 2020, up to a maximum benefit of the lesser of \$847 per week and 75% of the employee's pre-crisis weekly remuneration. The subsidy is only available in respect of non-arm's length employees employed prior to March 15, 2020. The result is that such employees who were not receiving regular salaries and wages between January 1, 2020 to March 15, 2020 would not be eligible to claim the subsidy. If there was an increase to these employees' wages during the claim period, it would calculate the subsidy per the pre-crisis eligible remuneration.

Interaction between CERB and 75% wage subsidy

If an employee was without remuneration for 14 or more consecutive days during the qualifying period, none of the wages paid during the claim period would qualify for the subsidy. The Department of Finance backgrounder (updated April 11, 2020) noted that the Government will consider implementing an approach to limit duplication. This could include a process to allow individuals rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount. This would have to be implemented in the future.

Compliance:

The penalties may include fines or imprisonment. 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 to the requirement to repay in full the subsidy that was improperly claimed. The Minister will have the power to make public the name of any applicants, possibly to penalize those who the government think did not put the subsidy to its intended use.

The updated website for the Canada Emergency Wage Subsidy (CEWS) can be found here:

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