

April, 1<sup>st</sup> 2020

## Measures taken by Canada

### 1. TELEWORK

As part of the current crisis related to the COVID-19, many employers have in recent weeks had to review their working methods.

Consequently, in order to comply with occupational health and safety standards, public health directives and various orders issued by the government, telework has been implemented rapidly by some employers.

It is also possible that, as a result of the current exercise, some of these new working methods will be maintained, partially or totally, even after returning to traditional working methods.

In the interests of good resource management and the protection of the employer's assets and information, it is notably important to establish, if it has not already been done, a Telework Policy.

The purpose of such a policy would be to regulate the activities of employees authorized by the employer to work from home and should address the following:

- Organization of the workplace;
- Work schedule and availability (including planned absences);
- Communications;
- Ownership of work tools;
- Permitted use of work tools;
- Security and confidentiality of information;
- Commitment to occupational health and safety;
- Remedial measures that can be taken by the employer.

The team at DS Lawyers will be pleased to assist you in establishing such a Policy.

Furthermore, as part of this correspondence, we would also like to remind you of the two major employment-related federal government programs that are part of the measures provided for in Canada's Economic Action Plan to respond to the COVID-19.



## 2. THE CANADA EMERGENCY WAGE SUBSIDY PROGRAM

The program was put in place to promote employee retention and/or recall. It also aims to prevent further job losses and to help Canadian businesses better position themselves to more easily and quickly resume their regular activities following the crisis.

While there is no specific obligation, the Department of Finance Canada indicates in its information bulletin that there is an expectation that employers will maintain, to the extent possible, their pre-crisis employees and pre-crisis wages, or that they will do their best to re-establish employees' wages to pre-crisis levels.

Eligible employers for this program are :

- individuals, taxable corporations, and partnerships of qualifying employers;
- non-profit organizations and registered charities.

It is important to note that the subsidy is available to companies (small or large) regardless of the number of employees.

Public sector entities (municipalities and local authorities, Crown corporations, public universities, colleges, schools and hospitals) are not be eligible for this subsidy.

The following general information has been provided by the government with respect to this program:

- The program is retroactive to March 15 and will be in place for 3 eligible periods;
- The amount of the subsidy for a given employee (with respect to "eligible remuneration" paid between March 15 and June 6, 2020) would be the greater of :
  - 75% of the amount of remuneration paid up to a maximum weekly benefit of \$847;
  - 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.

Employers will also be eligible for a subsidy of up to 75% of the wages and salaries paid to newly hired employees.

Eligible remuneration may include salary, wages, and other remuneration. These are amounts for which employers would generally be required to withhold or deduct amounts to remit to the Receiver General on account of the employee's income tax



obligation. However, it does not include severance pay, or items such as stock option benefits or the personal use of a corporate vehicle.

A special rule will apply to employees that do not deal at arm's length with the employer.

- To be eligible for the subsidy for an eligible period, the employer must have suffered a decrease of at least 30% in gross income, which will be analyzed in comparison to the previous year's income according to the table included below. Employers will have to certify the decrease in revenues in their subsidy application.

An employer's income is considered income from its business when carried on in Canada from arm's length sources. Income would be calculated using the employer's normal method of accounting and would exclude income from extraordinary items and amounts on account of capital.

| Eligible Period | Claiming Period     | Reference period for eligibility |
|-----------------|---------------------|----------------------------------|
| Period 1        | March 15 – April 11 | March 2020 over March 2019       |
| Period 2        | April 12 – May 9    | April 2020 over April 2019       |
| Period 3        | May 10 – June 6     | May 2020 over May 2019           |

- Eligible employers will be able to apply for the Canada Emergency Wage Subsidy through the Canada Revenue Agency's ("CRA") My Business Account portal, as well as through an online application. Employers must keep records to demonstrate the reduction in their arm's length income and the remuneration paid to employees. More information on the application process will be available soon. It is anticipated that the web portal will be implemented within 3 to 6 weeks.
- The funds would be available within 6 weeks of the request.
- Penalties may apply in cases of fraudulent applications. In addition, anti-abuse rules will be proposed to ensure that the subsidy is not obtained inappropriately and that employees receive the amounts owed to them.
- The wage subsidy received by an employer would be considered government assistance and would have to be included in the employer's taxable income.



### 3. CANADA EMERGENCY RESPONSE BENEFIT PROGRAM (\$2,000/4 WEEKS, FOR UP TO 16 WEEKS).

Note that the employee is not eligible if he or she is still employed and receiving wages (in whole or in part). However, in this case, the employer could validate the its eligibility for the Wage Subsidy Program.

You can refer your employees who have been laid off and/or are still employed by your company but who will not receive a salary for a period of 14 days or more, to the following link:

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

This program is coordinated by Service Canada and the CRA.

The online application can be made starting April 6 (see the grid of days based on the employee's date of birth). To apply, employees will need to be registered on the CRA's My Account platform. Therefore, it is recommended that employees register or update their "My CRA Account" now, or alternatively, if they have a "My Service Canada Account", to share data, in order to update their address and direct deposit information.

See: <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra.html> for more information related thereto.

It should be noted that employees who have already applied for Employment Insurance with Service Canada on or after March 15, 2020, do not have to reapply, their application will automatically be processed through the process put in place for the Canada Emergency Benefit.

A reminder of the eligibility criteria for the Canadian Emergency Benefit:

- reside in Canada (some foreign workers may be eligible under certain criteria);
- be 15 years of age or older at the time of application;
- have stopped or plan to stop working because of COVID-19, or because of illness or job loss for reasons beyond control;
- have lost or will lose regular employment or self-employment income due to COVID-19 for at least 14 consecutive days in the initial 4-week period.
- have earned a minimum income of \$5,000 (includes income from: salary, self-employment, maternity or parental benefits, employment insurance) in the last 12 months or in the 2019 calendar year from at least one of the following sources:



- employment income;
- self-employment income.

No documents will be required for the online application.

If the benefit is paid by direct deposit, the employee should receive it within 3 working days of the date of application. If the benefit is paid by cheque, the delay will be 10 working days following the date of the request.

The employee will be required to apply for and confirm eligibility for the Canada Emergency Response Benefit (CERB) every 4 weeks.

For more information, please do not hesitate to contact our Employment and Labour Law team and/or Business Law team.



**Josée Pilon**  
Partner  
jpilon@dsavocats.ca



**Marc Bélanger**  
Partner  
mbelanger@dsavocats.ca



**Nicolas Dubois**  
Associate  
ndubois@dsavocats.ca