

# Coronavirus (COVID-19): Legal update for Canadian employers - Overview of government relief for employers and employees

April 3, 2020

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# Canada Emergency Response Benefit (CERB)

April 3, 2020

Jeff Bastien, Senior Associate, Vancouver



# What is the CERB?

- Temporary income support
- \$2,000 every four weeks for up to 16 weeks
- Not limited to employees
- Available March 15, 2020 to October 3, 2020
  - Must apply by December 2, 2020

# CERB Eligibility

- Reside in Canada;
- At least 15 years old;
- Stopped working because of COVID-19 or are eligible for Employment Insurance regular or sickness benefits;
- Income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and
- Have been or expect to be without employment or self-employment income for at least 14 consecutive days in the initial four-week period. For subsequent benefit periods, they expect to have no employment income.

# CERB and Employment Insurance (EI) benefits

- Cannot receive EI benefits and the CERB for the same period
- Individuals already receiving EI regular benefits will continue to receive those benefits until the end of their benefit period
  - If EI regular benefits end before October 3, 2020, then apply for the CERB
- If individual became eligible for EI regular or sickness benefits on/after March 15th, the claim will be automatically processed through the CERB
- When eligible for the CERB, individuals receive \$500 per week, regardless of what they may have been eligible to receive through EI
- Individuals retain eligibility to receive for EI after they stop receiving the CERB

# Applying for the CERB

- Prior to April 6, can apply for EI if eligible
  - Will be processed as EI or the CERB depending on the date the employee became eligible for EI (before/after March 15)
- On/after April 6, applications for the CERB may be made through the Canada Revenue Agency
  - Single portal for applications for the CERB and EI
  - Online: <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra.html>
  - Phone: 1-800-959-2019
- CRA has encouraged applicants to apply on certain days, based on month of birth, to help manage volume of applications

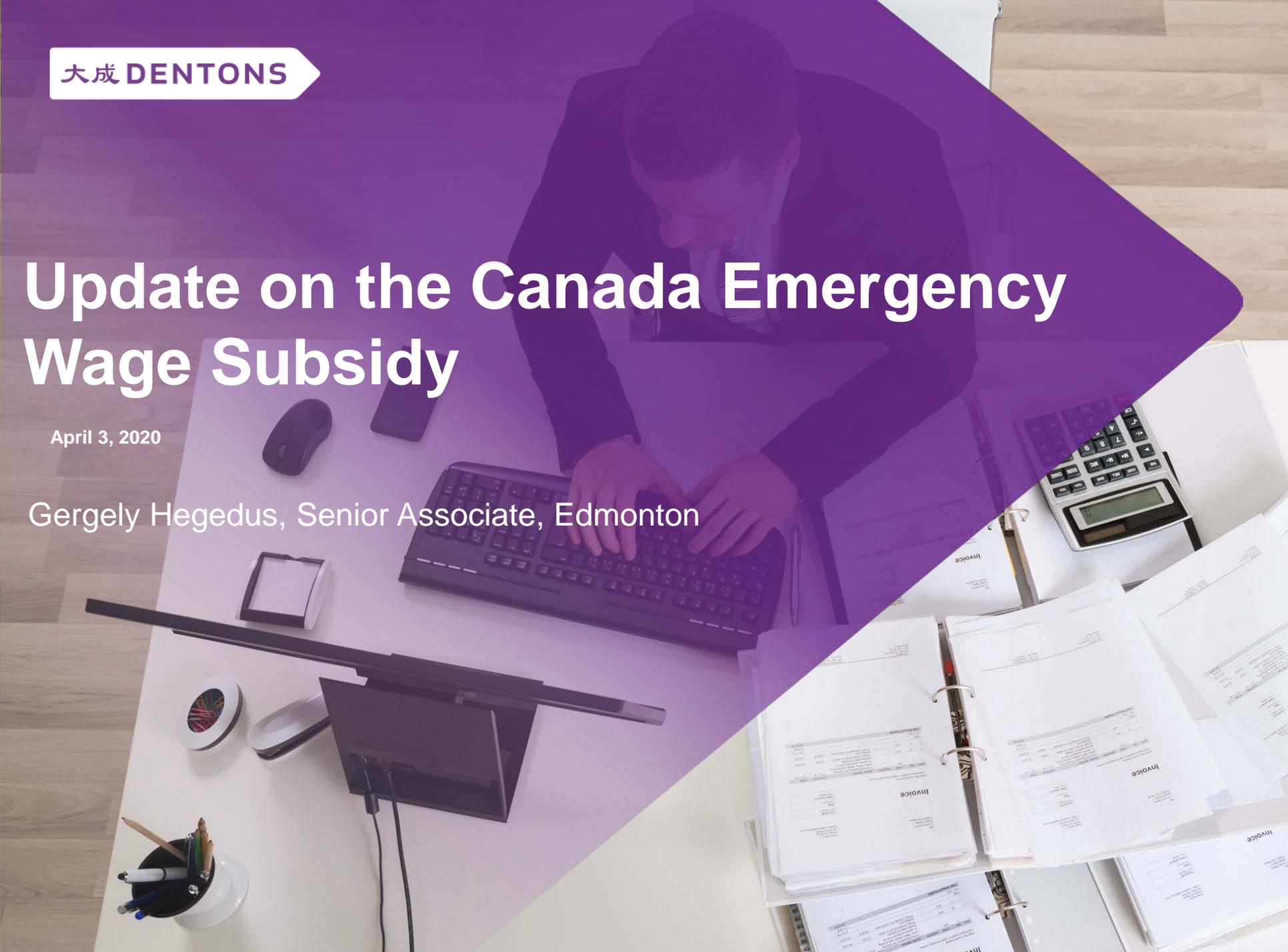
# CERB

- Need to re-apply and confirm eligibility for the CERB every 4 weeks (to a maximum of 16 weeks)
- Direct deposit within 3 business days; cheque within 10 business days

# Update on the Canada Emergency Wage Subsidy

April 3, 2020

Gergely Hegedus, Senior Associate, Edmonton



# Overview of the Canada Emergency Wage Subsidy

- What is it?
- Who qualifies (and who doesn't)?
- How do you qualify?
- How do you apply?
- How is it paid?
- Is it taxable?

# What is it?

- Source of income through this difficult time
- Re-hire workers previously laid off, and to keep those who are already on payroll
- Subsidy up to **75%** on the first **\$58,700** per employee (or up to **\$847/week**) for **up to three months**
- retroactive to March 15, 2020.

# Who qualifies?

- Employers of all sizes and across all sectors of the economy:
  - individuals
  - taxable corporations
  - partnerships consisting of eligible employers
  - non-profit organizations
  - registered charities

# Who doesn't qualify?

- Public bodies:
  - municipalities and local governments,
  - Crown corporations,
  - public universities,
  - colleges,
  - schools and
  - hospitals

# How does an employer qualify?

- Drop in gross revenues of **at least 30 per cent** in March, April or May, when compared to the same month in 2019
- Employers need to **attest** to the decline in revenue.

# What period do you look at?

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

# What is revenue?

- Revenue from **business carried on in Canada earned from arm's-length sources.**
- Exclude revenues from **extraordinary items** and amounts on **account of capital.**

# What about new businesses?

For eligible employers established after February 2019, eligibility would be determined by comparing monthly revenues to a **reasonable benchmark.**

# What about non-profits and charities?

- TBD

“the government will continue to work with the sector to ensure the definition of revenue is appropriate to their specific circumstances.”

# Is it taxable?

- Considered government assistance and be included in the employer's taxable income.
- Reduce the amount of remuneration expenses eligible for other federal tax credits calculated on the same remuneration.

# What about non-arm's length employees?

- Limited to the eligible remuneration paid in any pay period between March 15 and June 6, 2020, up to a maximum benefit of \$847 per week or 75 per cent of the employee's pre-crisis weekly remuneration.

# Is there a limit to how much an eligible employer may claim?

- No overall limit on the subsidy amount that an eligible employer may claim.

# How does one apply?

- The Canada Revenue Agency's My Business Account portal

OR

- Web-based application

# Do employers have to top-up the remaining 25%?

- No, but...
- Employers expected to make best efforts to top-up.

# How long will the program be in place?

- 12-week period
- from March 15 to June 6, 2020.

# When?

- 3 to 6 weeks to roll-out the program

# Example

## Business

- 4 full-time employees, each earning \$800 per week
- 6 part-time employees, each earning \$400 per week
- Total weekly payroll of \$5,600
- Revenues being down by 30%.

## Subsidy

- Eligible for a weekly wage subsidy of \$4,200 (\$600 for each of their full-time employees and \$300 for each of their part-time employees).

# What if you receive subsidy and are not entitled?

- Repayment of the subsidy
- Penalties for fraudulent claims
- Anti-abuse rules proposed
- New offences
- Penalties may include fines or even imprisonment

# CEWS and the CERB

- No CEWS for remuneration paid to an employee in a week that falls within a 4-week period for which the employee is eligible for the Canadian Emergency Response Benefit.

## 10% Temporary Wage Subsidy and CEWS

- Those organizations that do not qualify for CEWS (i.e. no 30% reduction in revenues) may continue to qualify for 10% wage subsidy:
  - up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer.
- For organizations that qualify for both, the 10% wage subsidy reduces the 75% subsidy

# Temporary Lay-Offs in Ontario, Alberta and B.C.

April 3, 2020

Stephanie Lewis, Counsel, Ottawa



# What is a temporary lay-off?

- Employers temporarily stop providing their employees with work (and usually compensation).
- Maximum length varies from province to province.
- Not permitted at common law.
  - Expressly include in employment contract.
  - Risk if not expressly included = payment in lieu of notice

# Maximum Length

- **Ontario:**
  - up to 13 weeks in any period of 20 consecutive weeks without pay
  - up to 35 weeks in any period of 52 consecutive weeks if employer continues to benefits or pension plan payments
- **Alberta:**
  - up to 60 days in a 120-day period
- **B.C.:**
  - up to 13 weeks in any period of 20 consecutive weeks without pay
- If maximum length exceeded, employee deemed terminated.

# Is advance notice required?

- In Ontario and B.C.:
  - No
- In Alberta:
  - Between 1 and 2 weeks depending on employee's length of employment.
  - Exceptions made in unforeseeable circumstances.

# Providing notice of a temporary lay-off

- Need to be done in writing
  - Advise employee that being temporarily laid off
  - Provide lay-off start date
  - Confirm whether benefits or pension plan payments will be continued
  - Advise that continue to accrue vacation (but not vacation pay)
  - Confirm that RoE will be provided
    - Remind employee of ability to apply for benefits through Service Canada

# While on lay-off

- Employees can look for other work
- Vacation entitlement continues to accrue

# What happens when employees recalled to work?

- If recalled and employees return to work, employment continues as if no layoff.
- If recalled and employees fail to attend work on the recall date, employees deemed to have resigned.
- If not recalled before the end of the maximum temporary layoff period, employees are deemed to have been terminated.
- Notice of termination date is the date they received notice of temporary lay-off.

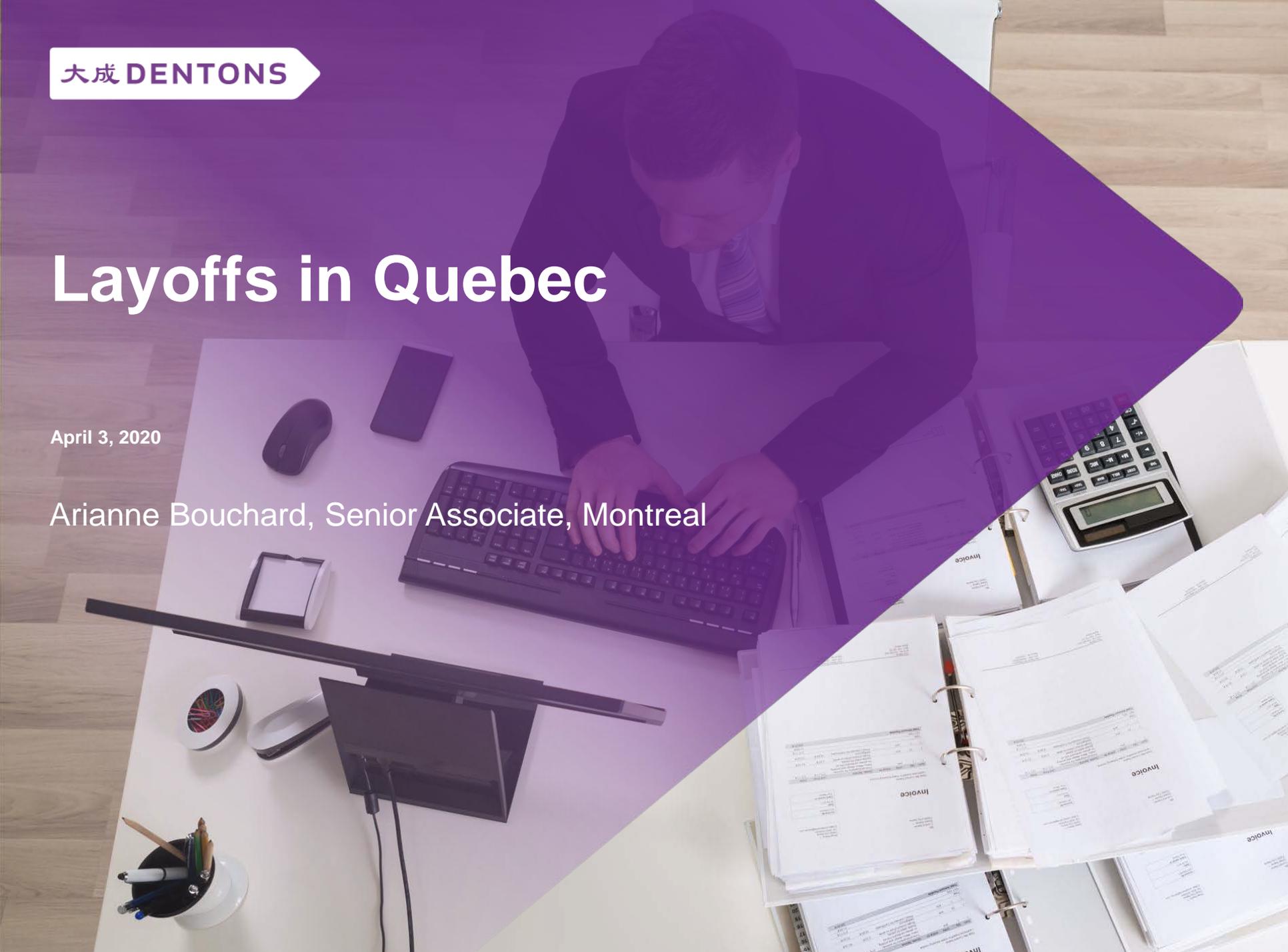
## General Tips:

- Maintain up to date contact information for employees.
- Provide timely and transparent communication with employees about their layoffs.
  - Recall dates
  - Extensions

# Layoffs in Quebec

April 3, 2020

Arianne Bouchard, Senior Associate, Montreal



# Layoff – What Employers should know ?

- During times of economic hardship, it is common practice for employers to lay off employees.
- A layoff **temporarily** suspends the contract of employment between the employer and the employee.
- Employees maintain their employment relationship and contractual relationship with the employer during that period.
- A layoff is a temporary layoff if it is **less than 6 month**.

# Layoff – Obligations of the Employer

- There are no advance statutory notice requirements before an employee can be placed on a temporary layoff. A written notice (layoff letter) to employees is not mandatory but it is recommended.
- Severance and termination payments are not owed if the employer recalls the employees before the maximum timeframe for a temporary layoff (6 months).

# Layoff – Obligations of the Employer, Con't.

- An employer is not required to pay the vacation indemnity at the time of layoff, if the employee's vacation was not planned during this period or unless otherwise requested by the employee.
- If an employee is not recalled before the maximum deadline, they are considered permanently laid off and will be eligible for notice payments and to receive all sums owed to them (wages, overtime, vacation indemnity, etc.).

# Layoff – Income and Benefits

- In most cases, employers are not required to continue benefits or pension plan contributions during temporary layoffs.
- Whether group insurance coverage is continued or suspended during temporary layoffs is at the employer's discretion. It should be noted that most employers only suspend the coverage for disability benefits during this period.
- Employee contributions to retirement/pension plans as well as employer matching programs are also generally suspended during this period.
- Subject to an employment agreement, policy or collective agreement that says otherwise, layoff periods are generally unpaid.

# Layoff – Income and Benefits

- Employees may qualify for Employment Insurance (EI) or the Canada Emergency Response Benefit (CERB).
- A [Record of Employment \(ROE\)](#) must be issued for each of the employees that are on temporary layoff.
- When issuing a ROE, employers need to enter the code that best corresponds to the reason for which they are issuing the ROE. Employers should enter *Code A- Shortage of Work* in Block 16 when they lay off employees .

# Layoff – Unionized Workforce

- Employers should review the layoff provisions of their collective agreement which will determine the parameters of temporary layoffs.
- Many collective agreements require employers to recall employees once the need for the layoff subsides and within a predetermined period. The right to recall might expire after a certain period, which can sometimes be longer than 6 months.

# Employment Insurance Benefit Overview

April 3, 2020

Alison Walsh, Partner, Edmonton



# Employment Insurance Regular Benefits

- Benefits for individuals who lose their jobs through no fault of their own (e.g. shortage of work or mass lay-offs) and are available for work and able to work, but can't find a job.
- Employee eligibility:
  - Must be employed in insurable employment;
  - Have been without work and without pay for at least seven consecutive days in the last 52 days; and
  - Have worked the required number of insurable employment hours in the last 52 weeks or since the start of the employee's EI claim, whichever is shorter
- Employees may not be entitled to benefits; exclusions include:
  - If they voluntarily left their job without just cause
  - Were dismissed for misconduct

# Employment Insurance Regular Benefits

- If an employee is eligible for EI regular benefits (or EI sickness benefits) prior to March 15, 2020, the claim will be processed under pre-existing EI rules:
  - Value of EI regular benefit:
    - The basis rate for calculating benefits is 55% of the employees average insurable earnings up to a maximum amount of \$573 per week (for 2020).
    - Employees can receive EI regular benefits for a period of 14 weeks up to a maximum of 45 weeks.
  - If these benefits end before October 3, 2020, the employee may apply for the Canadian Emergency Response Benefit if they meet the eligibility requirements
- If an employee applies for EI regular benefits (or EI sickness benefits) on March 15, 2020 or later their claim will automatically be processed through the Canada Emergency Response Benefit

# Employment Insurance Sickness Benefits

- EI sickness benefits provide up to 15 weeks of income replacement for employees unable to work because of illness, injury or quarantine.
- During the COVID-19 crisis eligible employees claiming EI sickness benefits due to quarantine:
  - Will not have to provide a medical certificate; and
  - The one week waiting period is waived for new claimants.
- If an employee cannot complete their claim for EI sickness benefit due to the quarantine they may apply later and have their EI claim backdated to cover the period of delay.
- Value of the EI sickness benefit:
  - Claim prior to March 15, 2020 – calculated using pre-existing EI rules
  - Claim on or later than March 15, 2020 – processed under Canada Emergency Response Benefit

# Employment Insurance Top-Ups: Supplementary Unemployment Benefit Plan

- SUB plans are intended to allow employers to top up of EI coverage for employees whose employment is disrupted by a temporary stoppage of work, training, illness, injury or quarantine.
- SUB plans must be registered with Service Canada.
- If SUB plan is not registered with Service Canada, EI top-ups are currently only permitted for employees on pregnancy leave, parental leave, family medical leave and critical illness leave.
- If employers provide top up to EI coverage for non-approved leave or where there is no registered SUB plan, the government may claw back payments from the employees.

# Work Sharing

- Program designed to help employers and employees avoid layoffs when there is a temporary reduction in the normal business activity that is beyond the control of the employer.
- Three-party agreement between employees, employers and the Government of Canada.
- Provides EI benefits to eligible employees who agree to reduce their normal working hours and share the available work over a specified period.
- Employees on a Work Sharing agreement must agree to a reduced schedule of work by the same percentage and to share the available work.

# Work Sharing

- The key eligibility requirements for implementing a Work Share program include that the business must:
  - Be experiencing a recent decline in business activity of at least 10% in sales and/or production levels within the last six months
  - Demonstrate that the shortage of work is temporary, beyond the business' control and not a cyclical / reoccurring downturn
- Employees must also be eligible to receive EI benefits
- Have at least 2 employees in a Working Sharing (WS) Unit:
  - WS unit is a group of employees with similar job duties who agree to reduce their hours of work by the same percentage over a specific period of time and agree to share work;
  - WS unit must reduce its hours by at least 10% to 60%. The reduction 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

- Effect March 15, 2020 to March 14, 2021, Government of Canada has introduced temporary special measures:
  - Extended the maximum duration of an agreement from 38 weeks to 76 weeks.
  - Waived the mandatory cooling off period for employers who have already used the work-sharing program; this means that eligible employees can immediately enter into a new agreement.
  - Expanded eligibility to employers who have been in business for only 1 year (rather than 2 years).
  - Eliminated the burden of having to provide to provide sales/ production figures at the same time.
- Prior to COVID-19 employers applying to participate in the program had to submit their applications to Service Canada a minimum of 30 days prior to the proposed start date.
  - Service Canada has indicated that it is streamlining its processing time to 10 calendar days.

# Working While on Claim

- Service Canada has an EI Working While on Claim program, which allows employees to keep earning a part of their EI benefits and all earnings from their job.
- Working While on Claim requires the employee to declare their earnings on-line.
- Generally, under the Working While on Claim Program, if an employee earns money while receiving EI benefits, they can keep 50 cents of the benefit for every dollar earned up to 90% of their usual weekly earnings.
- Employees are not eligible to receive EI benefits if they work a full week, regardless of the amount earned.

# Record of Employment

- If employees are affected by COVID-19 and no longer working employers must issue an ROE.
- Service Canada has recommended the following ROE Codes for reason for issuing the ROE:
  - Sick or quarantined: code D (illness or injury)
  - No longer working due to shortage of work because business has closed or decreased operations due to COVID-19: code A (shortage of work)
  - If employee refuses to come to work but is not sick or quarantined: code E (quit) or code N (leave of absence)

# Thank you



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