

Coronavirus (COVID-19): Legal update for Canadian employers – Return to work updates

May 22, 2020

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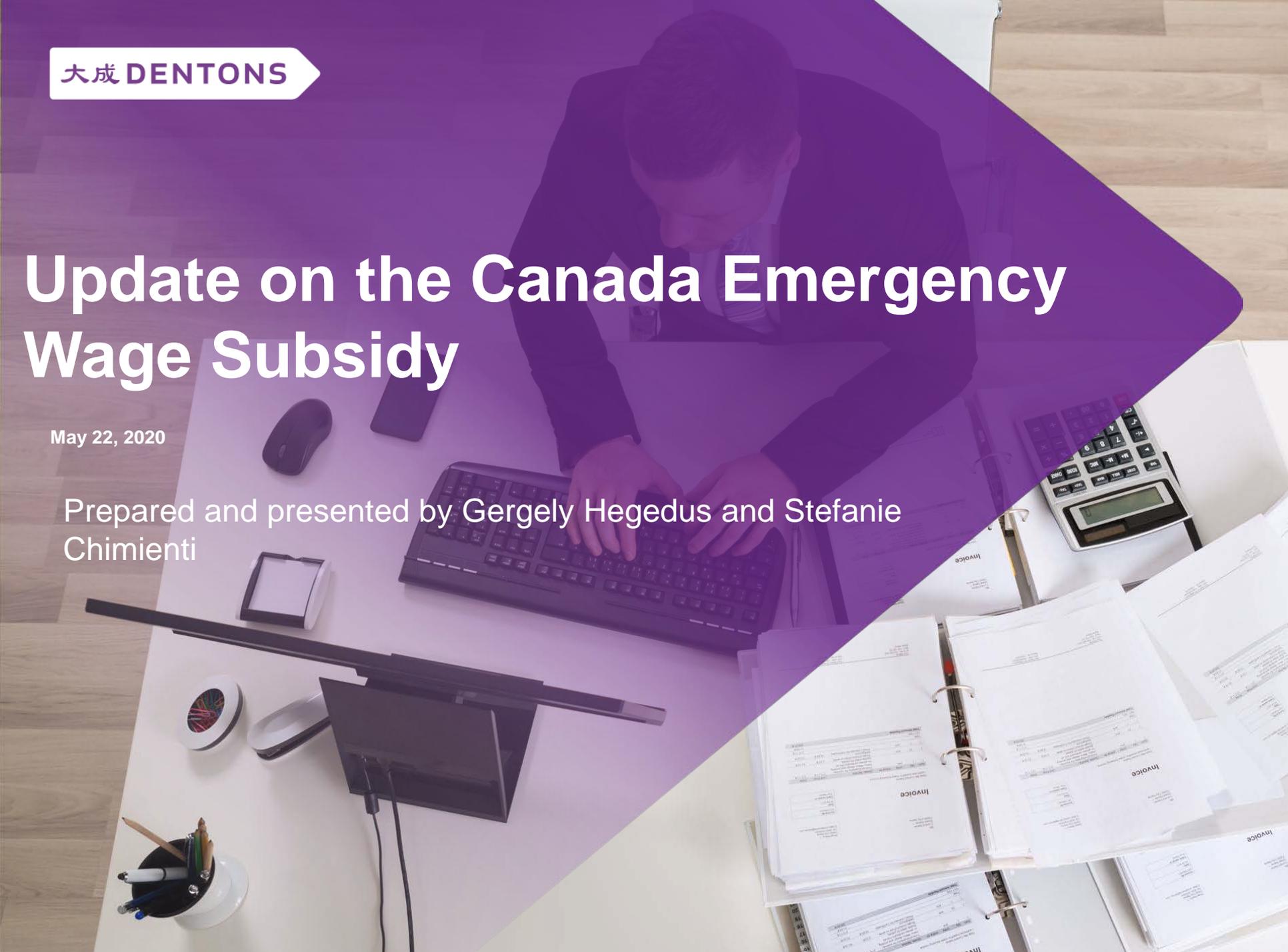


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Update on the Canada Emergency Wage Subsidy

May 22, 2020

Prepared and presented by Gergely Hegedus and Stefanie Chimienti



Claims to date

CEWS summary data since launch, as of May 18, 2020

Applications processed and approved

215,661

► Breakdown by claim period

All approved applications by value

Under \$100K (thousand)	206,121
\$100K (thousand) to \$1M (million)	9,294
\$1 M (million) to \$5 M (million)	223
Over \$5M (million)	23

Applications received ¹

228,214

Employees whose wages will be supported by CEWS ²

By claim period [?]

Period 1	2,049,252
Period 2	709,575

Dollar value of subsidies paid

\$5.70 billion

- 1 Applications received includes all submitted applications (processed and approved, processed and rejected, and yet to be processed).
- 2 Based on approved applications. Some employees have been supported in more than one claim period.

Extension of program to August 29th

Period	Dates	Required decline in qualifying revenue	Reference Period
CURRENT CLAIM PERIODS			
1	March 15 to April 11, 2020	15%	March 2020 compared to <ul style="list-style-type: none"> March 2019 or Average of January and February 2020
2	April 12 to May 9, 2020	30%	April 2020 compared to <ul style="list-style-type: none"> April 2019 or Average of January and February 2020
3	May 10 to June 6, 2020	30%	May 2020 compared to <ul style="list-style-type: none"> May 2019 or Average of January and February 2020
ANTICIPATED CLAIM PERIODS TO AUGUST 29, 2020 (TO BE CONFIRMED BY CRA)			
4	June 7, 2020 to July 4, 2020	30% <i>*CRA to confirm revenue decline threshold</i>	June 2020 compared to <ul style="list-style-type: none"> June 2019 or Average of January and February 2020 <i>*CRA to confirm reference period</i>
5	July 5, 2020 to August 1, 2020	30% <i>*CRA to confirm revenue decline threshold</i>	July 2020 compared to <ul style="list-style-type: none"> July 2019 or Average of January and February 2020 <i>*CRA to confirm reference period</i>
6	August 2, 2020 to August 29, 2020	30% <i>*CRA to confirm revenue decline threshold</i>	August 2020 compared to <ul style="list-style-type: none"> August 2019 or Average of January and February 2020 <i>*CRA to confirm reference period</i>

Expansion of eligible entities

- Partnerships that are up to 50-per-cent owned by non-eligible members;
- Indigenous government-owned corporations that are carrying on a business, as well as partnerships where the partners are Indigenous governments and eligible employers;
- Registered Canadian Amateur Athletic Associations;
- Registered Journalism Organizations; and
- Non-public colleges and schools, including institutions that offer specialized services, such as arts schools, driving schools, language schools or flight schools.

Applying for the Subsidy

- Representatives may apply on behalf of clients
 - Representatives (authorized at a level 2 or 3) will be able to apply for the CEWS on behalf of their clients through the Represent a Client service, as well as through the Web Forms application.
- Processing of the CEWS
 - The processing of the CEWS will be performed at the payroll program account level. This means that employers will have to file a separate application for each payroll program account.
- Payroll cycles
 - An eligible employer's payroll frequency (whether bi-weekly, semi-monthly, monthly, etc.) has no effect on the calculation of eligible remuneration paid for purposes of the Subsidy.

Applying for the Subsidy - Continued

• Reporting Requirements

- Employers will be expected to report the amount of the CEWS that was used to pay each of their employees' salaries by using a special code in the "Other information" area at the bottom of the employees' T4 slips. More information is expected to be released on the T4 reporting requirements before the end of the year.

• Recordkeeping

- Employers must keep records supporting their CEWS claim. This includes maintaining adequate books and records to ensure that their claim is accurate and complete, and clearly supports their eligibility for the CEWS for a claim period.
- Books and records includes ledgers, journals, financial statements, contracts, elections, calculations, or other working papers, payroll records, sales invoices, and any other relevant document.
- A signed attestation, and record of any elections made for the purposes of determining an employer's qualifying revenue, must also be maintained and made available to the CRA upon request.

Retroactively hiring and paying employees

- Employees who have been laid off or furloughed can become eligible retroactively, as long as you rehire them and their retroactive pay and status meet the eligibility criteria for the claim period. **You must rehire and pay such employees before you include them in your calculation for the subsidy.**
- Individuals may have received, or continue to receive, the Canada Emergency Response Benefit (CERB). Depending on the specific situation, these individuals may be required to repay some or all of the amounts they received.

Eligible Remuneration

- Eligible remuneration includes: (a) salary, wages, or other remuneration, and (ii) fees, commissions, or other amounts for services.
 - **Controlled tips as well as declared tips, are also “eligible remuneration” for the purpose of the Subsidy. Controlled tips are tips that an employer controls or possesses and then must pay to the employee. Declared tips (in Québec only) is the amount of tips that provincial law requires an employee to declare to their employer along with their controlled tips.**

Eligible Remuneration - Continued

- Eligible remuneration does not include:
 - retiring allowances;
 - stock options;
 - any amount that can reasonably be expected to be paid or returned, directly or indirectly to the employer, or a person with which the employer does not deal at arm's length, or another person or partnership at the direction of the employer;
 - any amount that is in excess of the employee's baseline remuneration, if the employee is reasonably expected to be paid a lower weekly amount than the baseline remuneration, and one of the main purposes of the arrangement is to increase the amount of the Subsidy received by the employer;
 - **dividends;**
 - **direct tips (tips paid directly by the customer to the employee, and for which the employer has no control over the tip amount or its distribution).**

Dividends paid to an employee who is also a shareholder is not considered “eligible remuneration” and therefore, will not be used in the computation of the Subsidy.

Qualifying Revenue:

Is investment revenue qualifying revenue?

The qualifying revenue of an eligible employer is generally determined in accordance with its normal accounting practices. To the extent that investment revenue, such as interest or dividends from investments in securities, arises in the course of an eligible employer's ordinary activities in Canada in the particular period, is not an extraordinary item or on account of capital, and is included in revenue under its normal accounting practices, it would generally be included in qualifying revenue.

Qualifying Revenue:

What are extraordinary items for qualifying revenue?

It is a question of fact

Not be expected to occur regularly or frequently within several years

- Grants or other government assistance that an entity is eligible to receive on a regular or reoccurring basis would not meet this criteria.

Not typical of the normal activities or risks inherent in the normal operations of the entity

- Consideration should be given to the nature of the services or products offered by an entity and the normal environment in which it operates.

Primarily out of the control of owners or management

- Consideration should be given to the extent that inflows are influenced by the decision of owners or management.

Qualifying Revenue:

Is government assistance an extraordinary item?

The CRA would generally consider emergency government assistance, including assistance from provinces and municipalities, directly related to COVID-19 to be an extraordinary item.

However, the CRA would not consider COVID-19 related government assistance to be extraordinary to the extent that it replaces or is meant to replace normal or recurring government assistance.

Accounting Methods

If the employer is eligible to use special accounting rules for "affiliated group", "group of company", "substantially all non-arm's length sales", or "joint venture", the accounting method **may be changed in a subsequent claim period.**

The Subsidy's interaction with the CERB

- When submitting your first claim, you cannot have earned more than \$1,000 in employment and/or self-employment income for 14 or more consecutive days within the four-week benefit period of your claim.
- When submitting subsequent claims, you cannot have earned more than \$1,000 in employment and/or self-employment income for the entire four-week benefit period of your new claim.

Outstanding returns

- CEWS payments will **not** be automatically withheld because of outstanding returns under the Income Tax Act or the Excise Tax Act (as well as certain other tax related laws).
- However, the legislation gives the CRA the ability to administer the Subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws.
- The CRA does have the discretion to withhold the amount of the CEWS payment in cases where there is a significant history of not complying with a duty or obligation under our tax laws.

Outstanding CRA debts

- Wage subsidy payments will **not** be automatically applied against any outstanding debt an employer has with the CRA.
- However, the legislation gives the CRA the ability to administer the wage subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws.
- The CRA does have the discretion to reduce the amount of the wage subsidy payment if an applicant owes or are about to owe a debt and the CRA determines there is a risk of not collecting all or part of your tax debt.

Penalties

In addition to the monetary penalties for intentional or grossly negligent false statements or omissions and other misconduct, the government announced:

- **Third-Party Penalties**

- If a person (such as an accountant or tax preparer) files or prepares the CEWS application on behalf of an employer, they could be subject to a third-party penalty under the Act, if they know or would reasonably be expected to know, that the application contains false statements, including an omission of information.

- **Partnership Liability**

- Partnerships will be liable to any penalties as if it were a corporation and may have to pay back any Subsidy amount that it received for a claim period.

Proposed amendments to the CEWS program

- Provide flexibility for employers of existing employees who were not regularly employed in early 2020, such as seasonal employees;
- Ensure that the CEWS applies appropriately to corporations formed on the amalgamation of two predecessor corporations; and
- Better align the treatment of trusts and corporations for the purpose of determining CEWS eligibility.

Working Remotely: Liabilities

May 22, 2020

Prepared and presented by Jeff Bastien



Remote Working Liabilities – OHS

- Employers are obligated to ensure the health and safety of employees working remotely
- For remote work, the home is an extension of the workplace
 - workers' compensation legislation applies
 - occupational health and safety obligations apply
- Ensure you have a **working from home health and safety policy**
 - Clarify roles, duties and responsibilities: education and training
 - Employees assess their workplace and report potential hazards to manager
 - Protocols for evacuating from employee's home to a safe location and how employees can contact the employer in case of emergency
 - Safe work practices and ergonomic considerations
 - Requirement to report work-related injuries
 - Protocols and procedures for check-ins

Remote Working Liabilities - Security

- Home computers and devices can be a security risk to companies and their business information
 - password protect devices
 - anti-virus software
- Revisit **confidentiality and technology policies**
 - Remind employees the current circumstances are not an excuse for non-compliance (e.g. emailing documents to personal email accounts, etc.)
- Prevent employees from falling into bad habits/practices with respect to dealing with client information – must continue to be treated as company property
- Take appropriate steps to secure videoconference meetings (passwords, waiting rooms, etc.)

Remote Working Liabilities – Privacy

- Paper records
 - Ideally work electronically
 - If paper required, use copies
 - Secure storage
 - Shredded – at home or bring back to the office to shred
- USB keys should be avoided if possible. Encrypted if must use.
- Private Phone calls
 - Private area in home
 - Use of headphones / avoid speakerphone if others home

Remote Working Liabilities - Miscellaneous

- Communicate to employees that they should not expect the right to be able to permanently work from home once COVID restrictions are lifted
- Consistently apply criteria for deciding who may be able to continue to work from home or who may be required to return
- Difficult to monitor employees, ensure efficiency, availability, etc.
- Hours worked: must track hours worked; use clear policies to set expectations and avoid overtime that is not pre-approved
- Review expense reimbursement policy
- **Insurance:**
 - Consider whether the company's insurance policies cover working from home arrangements. Do any policies need to be updated? (e.g. fleet vehicles being parked at employees' residences rather than company's parking lot)
 - Homeowner's insurance cover lost/damaged company property?

Am I Covered? Workers' Compensation and COVID-19

May 22, 2020

Prepared and presented by Andy Pushalik



The Latest on Workers' Compensation Coverage for COVID-19 (Ontario)

Type	Number
Claims allowed	983
Claims not allowed	275
Claims pending	2,439
Exposure incident reports received	1,989

**Data current as of May 15, 2020

The Latest on Workers' Compensation Coverage for COVID-19 (British Columbia)

Type	Number
Claims allowed	134
Claims not allowed	86
Claims pending	90

**Data current as of May 13, 2020

Adjudication of COVID-19 Claims

- Key eligibility criteria – must be work related
- Key considerations:
 - nature of the worker's employment created an elevated risk of contracting COVID-19; and
 - worker's COVID-19 condition has been confirmed.

Should employers get employees to sign waivers?

- Unlikely enforceable
- Employees cannot contract out of their workers' compensation rights

Thank you



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