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COVID-19 Return to Work Employer Toolkit

QUÉBEC

This toolkit has been developed to help employers, with at least one establishment in Québec, deal with some of the issues they may face when reopening their business and recalling their employees to work in the context of COVID-19 and the gradual resumption of economic activity. Please note that the information provided in this toolkit does not constitute legal or professional advice, or legal opinion. Each employer will need to develop its own plan tailored to the realities of its industry, its business and its employees. We hope that this toolkit will provide employers with some of the background information they need to properly plan and manage the resumption of their activities. If you have any questions, please contact a member of Dentons Canada Employment and Labor Law group.

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Introduction

When we released the Dentons Canada COVID-19 Employer Toolkit on March 11, 2020, the impacts of the COVID-19 pandemic on Québec and other Canadian provinces workplaces were largely yet to be known. At that time, our focus was to provide employers with a practical framework to navigate the issues that would likely be of most relevance in the early stages of the pandemic, namely questions on health and safety, remote work and employee leaves of absence.

Since the publication of this toolkit, our society has undergone unprecedented upheaval. Governments have ordered the temporary closure of many sectors of the economy, hundreds of thousands of Canadian employees have been temporarily laid off, or have had their hours or wages reduced, and the majority of those who continue to work do so from home. In addition, across the country, employment laws and regulations have been amended, and the federal and provincial governments have introduced several new benefits, subsidies and financial assistance programs for employers and employees.

While we all hope the worst is behind us, we are preparing for a gradual recovery of our economic activities. In Québec, as announced by the government on April 28, the economic recovery will begin with the reopening of retail businesses, manufacturing companies and construction sites.

However, this return will take place in a very different environment than the one we left in March. Indeed, until we have access to an effective vaccine or treatment against COVID-19, we will all have to take new measures to limit the spread of the virus, which is likely to make employers' obligations with respect to occupational health and safety more burdensome.

In this context, we have prepared this COVID-19 Return to Work Employer Toolkit, which we hope will answer many questions Québec employers are likely to have regarding labor and employment law as well as occupational health and safety.

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A. Announced timetable for the resumption of economic activity

Over the next few days, economic activity will gradually resume in Québec, according to the schedule announced by the government. The reopening of various businesses will be done in phases, depending on the type of activity and geographical areas. At this time, reopening dates have been announced for the retail, manufacturing and construction sectors. It is important to note that these dates are subject to change depending on the evolution of the virus and the public health authorities recommendations.

1. RETAIL

Starting May 4, 2020, retail businesses with direct access to the outdoors, as well as businesses in the supply chain of these businesses, were able to resume operations, with the exception of those in the Montréal Metropolitan Community (MMC), which will be able to reopen only as of May 25.

2. CONSTRUCTION

Starting May 11, 2020, construction sites in all sectors of the construction industry will be able to resume operations. This recovery concerns all sectors of the construction industry: residential, civil engineering and roads, institutional and commercial, and industrial. This recovery also means the industry's supply chains are reopening. The administrative staff in this sector will have to keep working remotely.

3. MANUFACTURING

Finally, on May 11, 2020, manufacturing companies in all regions of Québec will be able to resume their activities. From May 11 to May 24, 2020, however, they will have to respect restrictions on the number of people who can be simultaneously present on a site. This maximum is set at 50 employees plus 50 percent of employees above the 50-employee limit.

For example:

A manufacturing site employing 60 employees during the same shift must operate with a maximum of 55 employees (50 + (60-50)/2); a manufacturing site employing 500 employees during the same shift must operate with a maximum of 275 employees (50 + (500-50)/2).

On May 25, 2020, manufacturing companies will be allowed to resume operations without any restrictions on the number of employees present to ensure their operation. However, all employees who can work remotely must continue to do so.

Subsequent phases for other sectors of the economy will be announced by the government at a later date.

B. Extended layoff periods, work recalls, refusals to work, and other issues

1. MAXIMUM DURATION OF A TEMPORARY LAYOFF

With respect to provincially regulated enterprises, the *Act Respecting Labour Standards* does not provide for a maximum period beyond which a lay-off can no longer be classified as 'temporary' and the employee is no longer in lay-off and is deemed terminated. However, the *Act Respecting Labour Standards* provides that, as when it terminates the employment of an employee, the employer must give written notice of termination, or compensation in lieu thereof, for a period prescribed by law to any employee whom it lays off for six months or more. Consequently, an employer who lays off an employee for a period of less than six months has no obligation in this regard.

If the layoff was originally scheduled for an indefinite period or for a period of less than six months, but ultimately extends for more than six months, the employer shall pay the compensatory indemnity to the employee no later than six months after the start of the layoff. However, in the case of unionized employees who benefit from a recall right under a collective agreement, the employer is not be required to pay this compensatory indemnity until the first of the following dates: (i) the expiry of the recall privileges of the employee, or (ii) one year after the layoff.

However, this does not mean that any layoff of more than six months (or one year in the case of unionized employees) **necessarily** amounts to a termination of employment (although beyond that length of time, it is much more likely that a court would so conclude). This distinction is important because, in the event of the termination of employment, the employer is required to pay a compensatory indemnity for the employee's accumulated but unused vacation time. In addition, the employer may be required to pay the employee, along with the compensatory indemnity mentioned above, an indemnity in lieu of reasonable notice of termination under the *Civil Code of Québec*.

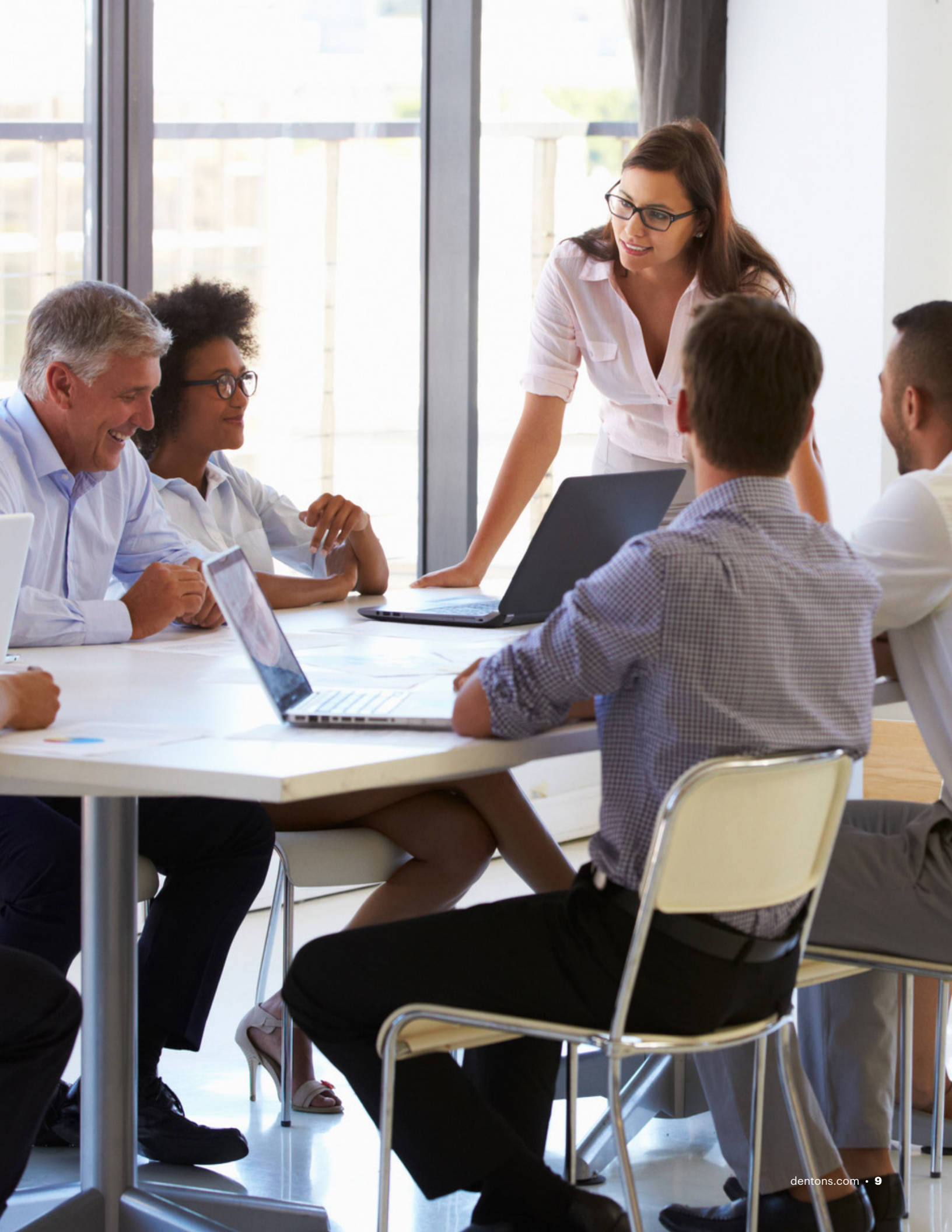
With respect to federally regulated enterprises, the *Canada Labour Code* and its regulations provide that a layoff is a termination of employment for the purposes of the collective dismissal, notice of termination and severance pay provisions unless it meets one of the following criteria:

- The duration of the layoff is for less than three months (the length of the layoff period may be fixed or indeterminate at the time of the layoff);
- The duration of the layoff is between three and six months, provided that at the time of the layoff, the employer informs the employee in writing of the date at which he will be called back to work and he is actually called back on that date;
- The duration of the layoff is between three and 12 months, where the employee retains a right to recall, in accordance with a collective agreement that is in force; or
- Regardless of the duration of the layoff, the employee continues to receive certain amounts or benefits paid by the employer during such layoff (no maximum period).

The *Canada Labour Code* also provides that recall periods of less than two weeks are not taken into account in calculating the duration of the layoff.

2. EXTENSION OF LAYOFF PERIODS

In regards to provincially regulated enterprises, no provision of the *Act Respecting Labour Standards* prohibits the extension of a layoff period beyond the specific date it was supposed to end. If the layoff is for a period longer than six months, the employer must pay the compensatory indemnity in lieu of notice of termination to the affected employees no later than six months after the start of the layoff. Such an extension increases the risk of constructive dismissal complaints.



In the case of federally regulated enterprises, unpaid layoffs between three and six months are not considered to be dismissals, only if the notice of layoff provides for a return-to-work date within a six-month period AND the employee is actually recalled to work on that date. Thus, failure to respect the recall date mentioned in the notice of layoff will have the effect of assimilating the layoff to a dismissal, and will trigger the application of the provisions relating to notice of termination, severance pay and, where applicable, collective dismissal.

3. TERMINATION DATE FOR EMPLOYEES NOT RECALLED TO WORK AT THE END OF THE LAYOFF PERIOD

Under the law applicable to employers under provincial jurisdiction, the date of termination of employment is a question of fact to be considered on a case-by-case basis. Generally, when a person is informed that he or she is laid off while he or she is already on temporary layoff, the date of termination remains the date on which he or she is informed of his or her non-recall or termination, not the date on which the layoff period began. However, the termination date could be the date of the beginning of the layoff, if it is demonstrated that, in fact, the employer never intended to recall the employee to work after the layoff.

Under the *Canada Labour Code*, failure to recall employees to work following a layoff has the effect of rendering the layoff equivalent to a termination of employment. In these cases, the termination would be deemed to have occurred on the first day of the layoff.

4. LAYOFF AND COLLECTIVE DISMISSAL

To the extent possible, employers should ensure that the extension of the layoff period for a group of employees does not have the effect of triggering the application of the collective dismissal provisions of the *Act Respecting Labour Standards* or the *Canada Labour Code*. These provide for greater compensation than that provided for in the case of individual layoffs or terminations.

According to the *Act Respecting Labour Standards*, a collective dismissal is when an employer terminates, or lays off for a period of six months or more, the employment of 10 employees or more of the same establishment during a period of two consecutive months. Thus, if an employee's layoff period extends over six months, he or she will have to be included in this calculation. It should be noted that in such a case, the event to be considered for the calculation of the number of employees concerned is the date when the layoff began, and not the time when the six-month period is reached.

Under the *Canada Labour Code*, a collective dismissal is defined as any termination (or a layoff that is deemed to be a termination) of 50 employees working in the same establishment, either simultaneously or over a period of not more than four weeks. In the case of a layoff that would become equivalent to a termination, the event to be considered would also be the date when the layoff began.

5. DETERMINATION OF THE ORDER OF EMPLOYEES TO BE RECALLED IN THE EVENT OF STAGGERED RECALLS

Whether for legal or economic considerations, many employers will not be able to recall all their employees to work at the same time and will have to conduct staggered recalls. In unionized settings, collective agreements generally provide that the order of recall of employees be based on seniority.

In non-unionized environments, this determination is made by the employer, who must not only take into account each employee's skill set in relation to the work available within the business, but also various strategic and practical considerations relating to the various government programs for which the company or employees may be eligible. For example, the employer may want to consider the portion of each employee's salary that may be covered by the Canada Emergency Wage Subsidy (CEWS), whether a work-sharing program is an option; the impact that the recall will have on each employee (depending on whether he or she receives the Canada Emergency Response Benefit (CERB) or Employment-Insurance (EI) benefits, and the interaction between different government programs.

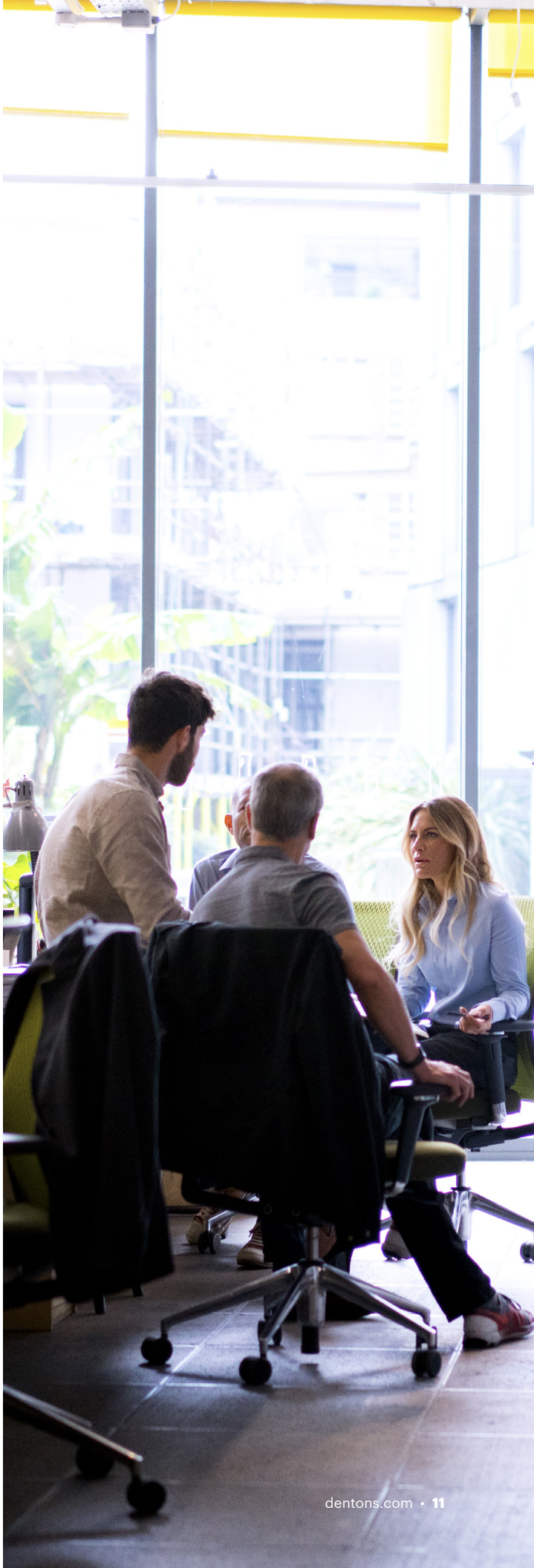
The employer may also want to take into account the willingness of employees to return to work sooner or later, as well as the impact that a recall to work, whether full-time or part-time, will have on their eligibility for certain benefits. However, an employee may not refuse to return to work simply because he or she is recalled before other employees.

6. EMPLOYEES REFUSING TO RETURN TO WORK FOLLOWING A LAYOFF

Employers should consider that, despite the gradual reopening of workplaces, some employees may not be able to return to work or may even refuse to return. These situations will have to be managed on a case-by-case basis and according to government directives. The main types of work refusals which are likely to occur are described below.

a. Employees who believe that they were effective working remotely and that they should be permitted to continue working remotely

There is no obligation for the employer to allow employees to continue to work remotely. Unless there is a disability that requires accommodation, the employer may require employees to return to work, provided that occupational health and safety requirements are respected. Ultimately, it is a business decision for employers to determine whether employees will be permitted to work remotely, be it on a full-time, part-time or occasional basis. That being said, despite the gradual reopening of workplaces, the government is encouraging remote work to ensure physical distancing. To this end, it may be necessary to reduce staff presence in the workplace for a certain period, hence the importance of remote work. Therefore, it may be appropriate for employers to have policies on remote work and the use of electronic systems.



b. Employees with young children who are unable to return to work due to school and daycare closures

Some employees with young children may not be able to return to work due to the closure of schools and childcare centres because they must meet their childcare obligations. In such circumstances, the employer is not required to allow remote work, although it is encouraged they be flexible and understanding. If an employee is not able to perform his or her work, the employer does not have to pay the employee.

It should be noted that "family status" (which covers parental childcare obligations) is not a prohibited ground of discrimination under the Québec *Charter of Human Rights and Freedoms*. However, this is the case under the *Canadian Human Rights Act*. Thus, as long as schools and daycare centres remain closed, in whole or in part, employees working in enterprises under federal jurisdiction may benefit from protection against discrimination based on "family status."

In all cases, under the *Act Respecting Labour Standards*, an employee may be absent from work for 10 days per year to fulfill obligations related to the care, health or education of his or her child, or the child of his or her spouse. If the employee has three months of continuous service, he or she may be entitled to be paid for the first two days of absence. Under the *Canada Labour Code*, the employees are entitled to a leave of absence of up to five days per calendar year for the following reasons, among others: (i) carrying out responsibilities related to the education of any of their family members who are under 18 years of age; (ii) carrying out responsibilities related to the health or care of any of their family members; and (iii) addressing any urgent matter concerning themselves or their family members.

The first three days of leave are paid if the employee has three months of continuous service.

c. Employees refusing to return to work because of underlying health problems that could lead to complications if they contract COVID-19

In general, an employee may refuse to perform work if he or she has reasonable grounds to believe that the performance of the work or the workplace exposes him or her to a danger to his or her health and safety. An employee, who has an underlying medical condition that could lead to complications if he or she contracts COVID-19, may refuse to return to work, if he or she has reasonable grounds to believe that his or her workplace poses a danger to him or her. For example, this could be an employee affected with lung or heart disease, or with other health conditions that weaken the immune system.

For employers under provincial jurisdiction, the right to refuse work is provided for in the *Act Respecting Occupational Health and Safety*, while for those under federal jurisdiction, it is provided for in the *Canada Labour Code*.

If an employee exercises his or her right to refuse to work, an employer under provincial jurisdiction must comply with the mechanism provided for in the *Act Respecting Occupational Health and Safety*, which requires, in particular, that a safety representative intervenes to examine the situation. If there is no safety representative, the latter shall be replaced by a representative of the union or, in the absence of a union, by an employee designated by the employee who refuses to perform his or her work. In the event of a disagreement and if the worker continues to believe there is a hazard, the intervention of an inspector from the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) will be required to determine whether or not a hazard exists. For federally regulated employers, a similar mechanism is provided for in the *Canada Labour Code*. The determination of whether a hazard is present will depend on the facts of each case.

In addition, an employer may have to accommodate an employee with an underlying medical condition that could lead to complications if he or she contracts COVID-19, which condition may constitute a disability under applicable human rights legislation. In analyzing the duty to accommodate, generally speaking, the employer must, in collaboration with the employee, and one or more health professionals, determine whether the employee has a disability, whether accommodation measures are necessary, and the nature of those measures. If the employee has a disability, then the employer will have to consider whether it is an undue hardship to accommodate the employee.

d. Employees refusing to return to work because they decide to isolate themselves on a voluntary basis or because they are afraid to return to work

The right of refusal applies only if there is a real and immediate danger to the health and safety of the employee. If the employer has implemented appropriate measures to make the workplace safe, an employee cannot refuse to return because he or she has decided to isolate himself or herself voluntarily, or because he or she is afraid.

If the employee's refusal to work is not justified, the employer could terminate the employee's employment. The employer could also consider laying off the employee or granting him or her a leave without pay. Subject to the eligibility criteria of this program, an employee who is deprived of income for a reason related to COVID-19 may apply for or continue to receive benefits under the CERB for up to 16 weeks.

7. STEPS TO BE TAKEN TO RECALL EMPLOYEES TO WORK FOLLOWING A LAYOFF PERIOD

It is recommended that employees be recalled to work by written notice specifying the date of the recall and the consequence of the failure to comply, although there is no such provision in the *Act Respecting Labour Standards* or the *Canada Labour Code*. For this purpose, the notice should provide that an employee, who does not return to work on the scheduled date, and, who does not provide reasonable justification for doing so, would be deemed to have abandoned his or her employment.

8. RECALL TO WORK UNDER WORKING CONDITIONS INFERIOR TO THOSE IN EFFECT PRIOR TO THE LAYOFF

If warranted by its financial situation or a slow down in business, and subject to the possible risk of constructive dismissal, an employer may recall employees to work for a portion of the hours they worked or the wages they earned prior to the layoff.

Depending on the amount the employee will earn following his or her call, he or she may remain eligible to continue to receive benefits under the CERB or EI, while working part-time for the employer. However, in order to avoid unpleasant surprises to employees, it is recommended that recall notices encourage those receiving government benefits to notify the government of all monies earned as a result of their recall to ensure they do not receive benefits in excess of those to which they are entitled.

9. APPLICATION FOR CEWS FOR A PERIOD DURING WHICH EMPLOYEES WERE ON LAYOFF

The CEWS provides that eligible employers may claim a wage subsidy for wages paid to employees since March 15, 2020. Many employers are wondering whether they can recall their eligible employees who have been laid off since that date, pay them retroactively the wages they would have earned during the period they were on layoff, and claim a wage subsidy on those amounts. The federal government has confirmed this is possible, subject to the condition that any amount of wages must be paid to employees before the employer can include it in the calculation of the subsidy it is claiming.

10. PART-TIME OR REDUCED PAY, AND GOVERNMENT BENEFITS

Both EI and CERB rules allow employees to continue to receive a portion of their regular income while still being eligible for government benefits.

a. Employment Insurance – Working While on Claim program

Under the "Working While on Claim" program, the employees who submitted an EI claim before March 15, 2020, and whose claim was processed under the rules of the *Employment Insurance Act* may continue to receive a portion of their benefits while earning a portion of their employment income. Under this program, an eligible employee can keep 50 percent of the amount of EI benefits he or she receives for every dollar earned, up to a maximum of 90 percent of his or her previous weekly earnings. If the eligible employee earns more than 90 percent of his or her previous weekly earnings, then the EI benefits received are deducted dollar for dollar. This program applies only to employees who work part-time, as those who work a full week, regardless of the amount earned, are not eligible for EI and, therefore, do not qualify for this program. This program is applicable to employees who receive regular EI benefits, as well as those who receive sickness or compassionate care benefits. Employees do not have to make a prior application to be allowed to work during a benefit period. They must simply report any compensation earned to Service Canada.

b. Canada Emergency Response Benefit (CERB)

The CERB is intended for people whose employment income has dropped drastically because of COVID-19, in addition to those who have lost their jobs, those who have been laid off, and those who have to temporarily stop working for reasons related to COVID-19. As a result, an employee, who works part-time during a qualifying period, may possibly remain eligible to receive benefits or retain the benefits received for that period. The maximum amount of income that an employee can receive without becoming ineligible to participate in the CERB depends on whether the employee makes

an application for the CERB for the initial period or for a subsequent period. During the initial period, the employee remains eligible to receive the CERB if he or she did not earn more than $1,000 for 14 consecutive days during the eligibility period. For subsequent eligibility periods, the employee remains eligible to receive the CERB if he or she did not earn more than $1,000 in total during the eligibility period.

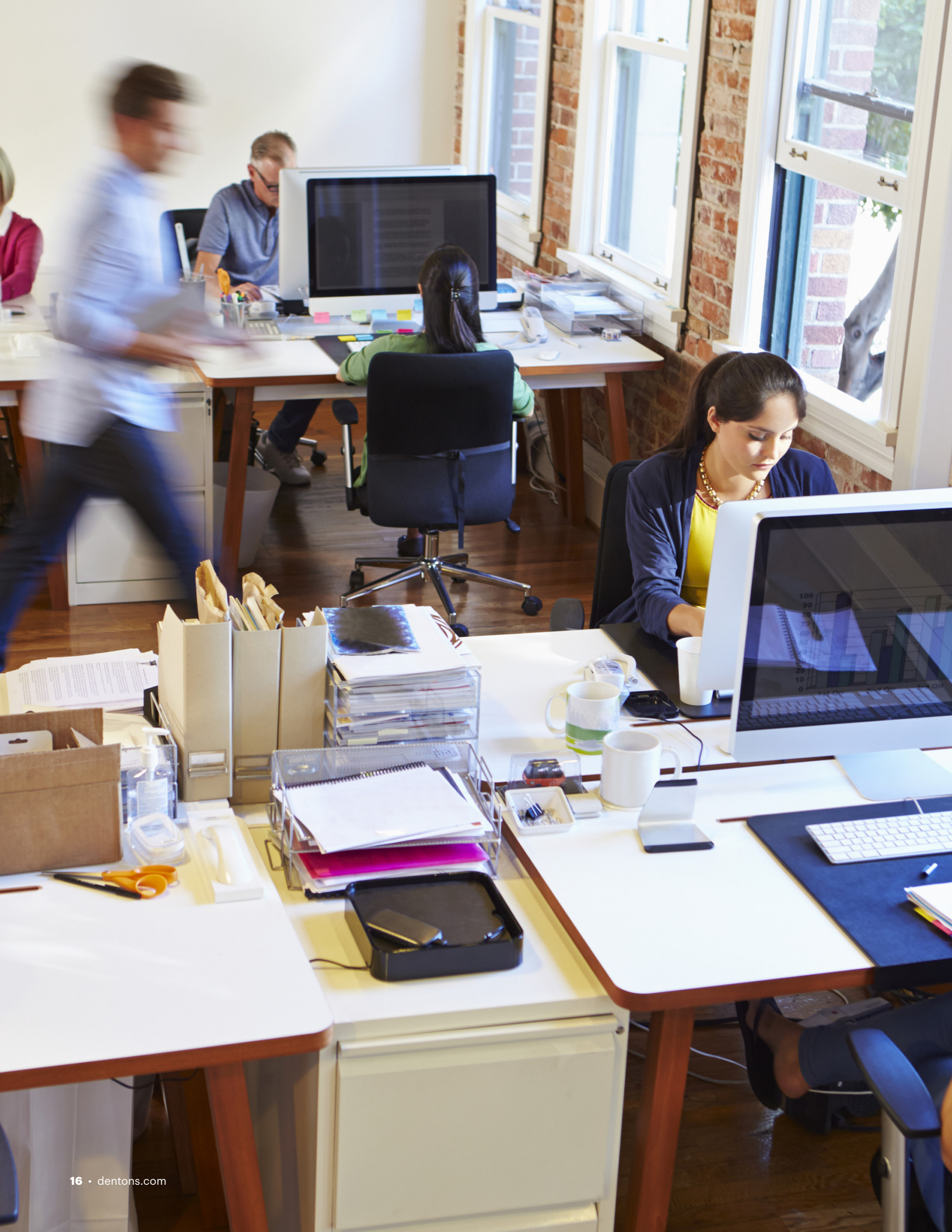
It should also be noted that, contrary to the EI rules, which provide for a mechanism to deduct excess income earned during a benefit period, under the CERB, a person, who exceeds the allowable income threshold during a qualifying period, loses his or her right to receive benefits for that period. Thus, a person who has received the $2,000 CERB benefit for a given period, but who no longer meets the eligibility criteria for that period, will have to repay the entire $2,000 received, regardless of whether the income earned in excess of the $1,000 limit is $1 or $5,000.

11. NEW LAYOFF FOLLOWING A RECALL TO WORK

Following the recall of employees, an employer may have to lay off the same employees again. This would possibly be the case if, for example, the government reorders the temporary closure of the company's business sector.

In such a case, provincially regulated employers will be able to consider both periods of layoff as separate events, since the *Act Respecting Labour Standards* does not provide for any particular restriction on successive temporary layoffs, or for any minimum period that the employer must respect between two periods of layoff. Federally regulated employers will be able to consider the two-layoff periods as separate events, if they are at least two weeks apart, since the *Canada Labour Code* provides that any recall period of less than two weeks is not taken into account in calculating the duration of the layoff.

Furthermore, employers must not recall employees to work solely to circumvent the law and avoid paying them the amounts to which they are entitled under the *Act Respecting Labour Standards* or *Canada Labour Code*.



C. Managing occupational health and safety

Under the *Act Respecting Occupational Health and Safety* and the *Canada Labour Code*, employers are required to take the necessary measures to protect the health and safety, and physical well-being of their employees. Employees have a corollary obligation to take the necessary measures to protect their health, safety and physical well-being. Employees must also ensure they do not endanger the health, safety or physical well-being of any persons in the workplace.

To ensure a safe return to work for their employees, employers must develop an action plan identifying the risks of transmission of COVID-19 in the workplace in order to implement appropriate prevention and control measures. To this end, several guides from public organizations, such as the CNESST and the *Institut national de santé publique du Québec*, identify prevention and control measures specific to the context of COVID-19. Although these guides are not legally binding, the implementation of the measures suggested therein is a means for employers to protect the health and safety of their employees.

In developing an action plan to protect employees from the risk of transmission of COVID-19, employers should ensure they comply with the directives of public health authorities. The prevention and control measures described below are recommended.

1. RISK ASSESSMENT

To implement appropriate prevention measures, employers must first identify the risks of transmission of COVID-19 in the workplace. To this end, employers should review all maneuvers that may expose employees to the virus.

2. PREVENTIVE MEASURES

a. Remote work

Government authorities are currently promoting remote work. Thus, employers should first assess whether it is possible for all or some of their employees to work remotely, in particular through technological means, in order to promote physical distancing, either at the workplace or when employees travel to and from the workplace.

b. Physical distance of two metres

In light of the recommendations of public health authorities, physical distancing is the most effective measure to prevent exposure to and spread of the virus. Employees should be required to maintain a distance of at least two metres from each other at the workplace, where practicable.

Therefore, it is recommended that employers plan work in accordance with this directive. Measures that can be taken, include relocating some workstations, adjusting schedules and providing technological tools to minimize physical contact.

If a distance of two metres is not possible, other means of physical distancing can be used, such as installing physical barriers between workstations that cannot be spaced apart.

c. Personal protective equipment

Where it is not possible to maintain a physical distance of two metres when performing certain tasks or in certain confined spaces, personal protective equipment adapted to the risk should be used. The mask is a preferred piece of equipment.

However, although current public health guidance indicates that personal protective equipment can be effective in reducing the spread of COVID-19, it should be used with caution. Misuse of this equipment can increase the risk of virus transmission. After each use, this equipment should be disposed of in a designated disposal unit, or properly sanitized and stored in a clean area. Personal protective equipment used in the workplace should not be brought home.

d. Control of access to workplaces

Current public health guidelines state that employers must control the access of all persons entering the workplace. They must therefore establish a procedure for identifying and excluding persons considered at risk of spreading the virus from the workplace.

Employers should ask their employees not to attend work if they have symptoms of COVID-19. Employees, who report symptoms, should seek medical advice on their condition. In addition, employees, who have contracted COVID-19, should not be allowed to enter the workplace until they have recovered and are no longer contagious. A medical opinion confirming their recovery may be required.

Screening questions may focus on the risks of exposure (travel abroad or to a region deemed at risk, contact with a confirmed or suspected case of COVID-19, exposure to potentially contaminated biological material), and the presence of symptoms associated with COVID-19 (fever, cough, exacerbation of chronic cough, difficulty breathing, sudden onset of loss of smell, without nasal congestion and/or with or without loss of taste).

The following control methods can also be applied:

- Ensure that employees are aware of the symptoms of COVID-19;
- Ask employees to monitor the onset of symptoms and develop a series of questions to guide employees through a self-assessment;
- Require employees to immediately report the onset of any symptoms of COVID-19 or any circumstances that may place them at risk;
- Ask supervisors to pay particular attention to the development of symptoms in members of their team; and
- Educate employees about taking precautions outside the workplace.

e. Taking the temperature

In the course of employment, the fundamental right to privacy limits situations where an employer can require an employee undergo a medical examination. Generally, when the work performed by the employee involves risks to his or her health, the employer may be justified in requesting a medical examination. The current crisis related to the COVID-19 pandemic allows employers to take more drastic measures to protect the health of their employees. Employers must take all reasonable measures to prevent or limit the spread of the virus in the workplace. This would allow employers to take the temperatures of their employees on arrival, even if it is an intrusion of their privacy. Employers who are considering implementing such a measure, will have to abide by a strict scientific protocol and ensure that employees are informed of the purpose and conditions of such a measure.

f. Maintenance of hygiene measures

Employers should make employees aware of the importance of following basic hygiene measures to avoid exposure to the virus and slow its spread, such as:

- Frequent hand washing with soap and water for at least 20 seconds and, if access to soap and water is not possible, the use of a hand sanitizer containing at least 60 percent alcohol;
- Respiratory etiquette requiring covering the mouth and nose when coughing or sneezing, either by using a tissue or by coughing into the crease of the elbow.

g. Workplace maintenance

Employers have an obligation to monitor the maintenance of workplaces. For this purpose, cleaning and disinfecting frequently touched surfaces and objects several times a day, especially in common areas, are important elements in controlling the spread of the virus.

It is also necessary to clean the sanitary facilities, at least every shift, and to disinfect them daily. In addition, employers should ensure the proper operation and maintenance of ventilation systems.

h. Training

The obligation of employers to train employees on occupational health and safety extends to training related to the prevention of COVID-19. Employers must ensure that employees receive appropriate training on physical distancing, hand hygiene, wearing of personal protective equipment and on all other implemented preventive measures, from the first day they return to work.

As well, they should designate the individuals responsible for managing occupational health and safety issues related to the pandemic and post their names in visible locations that are easily accessible to employees.

3. RESPONSE TO EMPLOYEE NON-COMPLIANCE WITH PREVENTION MEASURES

In order to comply with their legal obligations in the area of occupational health and safety, employers must ensure their employees comply with the implemented preventive measures that are put in place and intervene in the event of non-compliance, in particular by imposing disciplinary measures.

4. COVID-19 WORKPLACE OUTBREAK RESPONSE PLAN

Despite the implementation of preventive measures, the risks of transmission of COVID-19 cannot be totally eliminated. Employers should therefore prepare a contingency plan to deal with the occurrence of COVID-19 in the workplace. This plan should include the following:

- The isolation or rapid removal of symptomatic or infected employees, and the identification, if possible, of an area where these employees can isolate themselves;
- A procedure for identifying persons related with the company who have been in contact with symptomatic or infected employees;
- A procedure for assessing the risk of transmission; and
- Adequate prevention and control measures in response to the identified risk.

D. Other considerations

1. VACATION

Employers should consider how they will manage vacations for the remainder of 2020, to best balance operational needs and financial considerations.

For employees who have not yet taken most of their vacation this year, the following questions will inevitably arise: (i) carry-over of vacation to a subsequent year; (ii) payout of a vacation indemnity to assist employees financially during this difficult period.

a. Carry-over of vacation

For some employers, the banking of vacation may be fine if they want to defer payment on that liability for as long as possible.

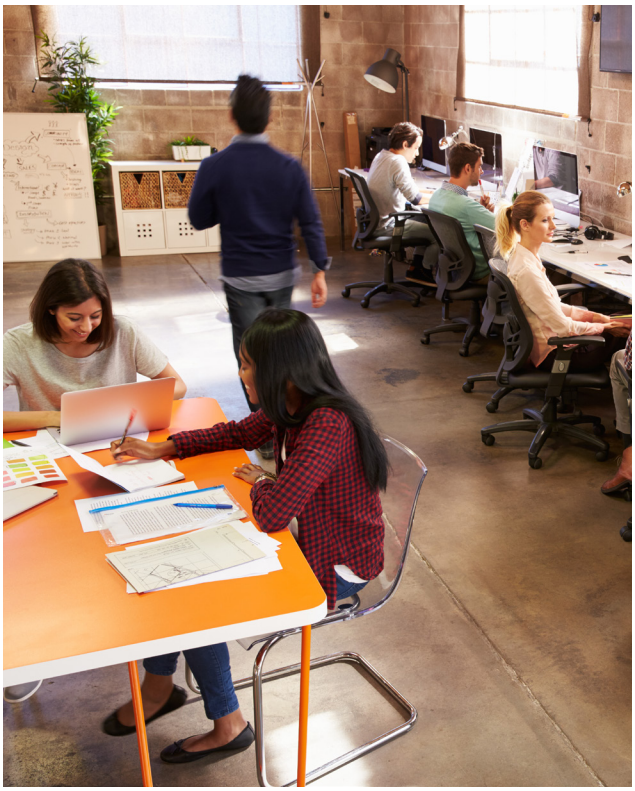
However, for employers under provincial jurisdiction, vacations provided for in the *Act Respecting Labour Standards* (of a minimum duration of two to three weeks, depending on seniority) must be taken within 12 months following the reference year in which they are earned, subject to certain exceptions. For example, an employee, who is absent due to illness, family or parental reasons at the end of the 12-month period following the end of the reference year, may defer the annual leave to the following year with the employer's consent. If the annual leave is not deferred, the employer must pay the indemnity for the annual leave to which the employee is entitled. In any event, vacation days or weeks exceeding the minimum period provided for in the *Act Respecting Labour Standards* can be banked and carried over to one or more subsequent years, if the employer so permits.

Under the *Canada Labour Code*, employees who work for an employer under federal jurisdiction must take their vacation no later than 10 months immediately following the completion of the year, subject to certain exceptions. An employee may, by written agreement with the employer, postpone or waive his or her entitlement to an annual vacation for a specified year of employment. Where an employee waives his or her vacation entitlement for a specified year of employment, the employer shall pay the vacation pay to the employee within 10 months after the end of such year. There is no obligation for the employer to authorize the carry-over of vacation days, unless otherwise provided for by law, in an employment contract or a collective agreement. Above all, it is important to remember that the timing of vacation rests with the employer rather than the employee. If it is in the employer's best interest to force employees to take their vacation in 2020, the employer may do so, subject to giving them the required notice of the commencement of their annual vacation. The length of this prior notice is four weeks for employers under provincial jurisdiction and two weeks for employers under federal jurisdiction

In light of the above, it may be appropriate for employers to update or modify their vacation policies. Such a modification should be discussed with legal counsel.

b. Payment of vacation pay

It is also important to keep in mind that vacation pay should generally not be paid out without the provision of corresponding vacation time. Even if vacation pay is paid out at an employee's request for financial reasons, the employer cannot forego providing the corresponding vacation time immediately upon payment. In other words, an employee who receives vacation pay cannot postpone taking it.



2. STRESS AND ANXIETY

The COVID-19 pandemic is an unusual situation that can cause fear, stress, anxiety and or a feeling of sadness in individuals. Several factors can contribute to these states of mind or feelings, such as health problems for employees or members of their families, childcare and senior care obligations while working remotely, a governmental ordered lockdown and financial difficulties. When employees return to work, employers should remind them of the existence of the Employee Assistance Program (EAP) and encourage them to use it. In the absence of such a program, they should invite them to seek help in other ways, if necessary.

3. PRIVACY

Inevitably, employers must collect personal information about employees in order to avoid the risk of spreading COVID-19 and to manage reported cases of infection within their organizations.

An employee who has contracted COVID-19 and is required to be absent from work has the right to the protection of his or her private life, which covers his or her health condition. On the other hand, to meet their occupational health and safety obligations, employers must inform their employees of the risks of contamination present in their workplace. Employers are faced with the necessity to balance the right to the protection private life of the employees contaminated by COVD-19 and the rights of the other employees to be informed of occupational health hazards in the workplace.

Employers may inform employees that they have potentially been in contact with a contaminated person in the workplace, without disclosing information that could identify said person. In particular, employers could limit the information to informing employees of their potential exposure to COVID-19 and by specifying, if possible, when and how they were exposed.

It is understood that in a small workplace, even if the employer does not disclose any personal information that identifies the contaminated person, the individual could still be identified by his or her colleagues could still identify the latter by inference. In all cases, employers must make reasonable efforts to protect the privacy of their employees.

Furthermore, it should be noted that the *Personal Information Protection and Electronic Documents Act*, which applies to federally regulated employers, allows for the disclosure of personal information, without the consent of the individual concerned, if such disclosure is made to a person needing the information because of an emergency that threatens the life, health or security of said individual.

E. Reminder of the main financial assistance programs for employers and employees

A reminder of the main financial assistance programs available to employers and employees is included in the annex to this toolkit.

APPENDIX

Main financial assistance programs for employers and employees

Federal programs

Work-Sharing	
Objective and summary description of the program	This program is designed to help employers avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond their control. The program provides income support to employees eligible for EI benefits who agree to work a temporarily reduced workweek and share the available work while their employer recovers. Rather than laying off some employees and keeping others on full-time status, the employer divides the available hours of work among the members of a "Work-Sharing unit*". The sharing of hours must be equitable, i.e., the percentage reduction in hours must be the same for all members of the Work-Sharing unit (between 10 and 60 percent). Employees in the Work-Sharing Unit must agree to reduce their working hours since participation in the program requires a three-party agreement between the employer, the employees involved (and their union, if applicable) and Service Canada. *Work-Sharing unit: A group of employees with similar duties who have agreed to reduce their normal working hours for a specified period.
Eligibility requirements for the employer **(including the special measures due to COVID-19)**	Be a private business, publicly-held company or not-for-profit organization; Have been in business in Canada year-round for at least one year; Have at least two employees in the Work-Sharing unit; and Have experienced a decrease of approximately 10 percent (or more) of a company's business activity (the shortage of work is temporary and beyond their control, and is not a cyclical/recurring slowdown or the result of a labour dispute).
Eligibility requirements for employees **(including the special measures due to COVID-19)**	Be "core employees" or employees who are considered essential to the recovery of the business; Not be a member of the management team or a person who controls more than 40 percent of the voting shares of the company; Be eligible to receive EI benefits; and Agree to a reduction of their normal working hours in order to share the available work (the same percentage reduction should apply to all the members of the Work-Sharing unit).
Program length	This is an ongoing EI program, with eligibility criteria extended to March 14, 2021, to allow for broader and simplified access in the context of COVID-19. A Work-Sharing agreement must have a minimum duration of six weeks and, as a result of COVID-19, may be extended up to a total of 76 weeks (normally limited to 38 weeks). Several agreements may follow one another, with no cooling-off period between them (special measure related to COVID-19).

Benefits or advantages that may be paid under the program	Service Canada pays EI benefits to employees in the Work-Sharing unit for each week they share work. The amount of these benefits is calculated by comparing the work hours missed pursuant to the Work-Sharing agreement with the hours the employee would normally have worked. Benefits are paid as a percentage of the missing hours. The employer pays the employees for the hours worked. For example, for an employee whose annual salary is more than $54,200 (maximum insurable earnings) and whose hours are reduced by 60 percent, the amount of EI benefits paid will be $343.80. For the 40 percent of hours worked, the employer will pay the employee his or her regular salary.
How to apply **(including the COVID-19 amendments to the application process)**	To apply for the Work-Sharing program, the employer must email the following documents at least 10 days prior to the start of the Work-Sharing agreement: Revised Form: Application for a Work-Sharing Agreement (EMP5100) And Revised Attachment "A": Work-Sharing unit (EMP5101) Email (Québec): QC-DPMTDS-LMSDPB-TP-WS-GD@servicecanada.gc.ca Each employee must also submit a request.
How this program interacts with other programs	CEWS: EI benefits received by employees under the Work-Sharing program reduce the amount of the wage subsidy to which the employer is entitled. SUB: The Work-Sharing Agreement cannot provide for the payment of benefits under the Supplementary Unemployment Benefit (SUB) program.
Program website	https://www.canada.ca/en/employment-social-development/services/work-sharing/guide-employer-responsibilities.html

Supplemental Unemployment Benefit (SUB) program	
Objective and summary description of the program	This program is designed to allow the employer to increase its employees' weekly earnings when they are unemployed due to a temporary layoff or absence of work, particularly due to illness or quarantine. The SUB paid by the employer is not considered earnings within the meaning of the *Employment Insurance Act* and, therefore, are not deducted from EI benefits to which the employee is entitled. For their employees to benefit from this program, employers are required to register their SUB plan with Service Canada, otherwise amounts paid as SUB will reduce the amount of EI benefits received by the employee (unless the EI benefit top-ups are for maternity, parental, caregiver or critical illness leave). The total of EI and SUB benefits must not exceed 95 percent of the employee's normal weekly earnings.

How to apply	To register for this plan, employers must send the registration form, a copy of the SUB plan they wish to register and any other relevant documents to Service Canada – SUB Program by fax at (506) 548-7473.
	
	An acceptable plan is one that:
	
	• Identifies the group of employees covered and the duration of the plan;
	• Covers a period of unemployment caused by one or a combination of the following:
	  • temporary stoppage of work,
	  • training,
	  • illness, injury or quarantine;
	• requires employees to apply for and be in receipt of EI benefits in order to receive payments under the plan;
	• requires that the combined weekly payments from the plan and the portion of the EI weekly benefit rate does not exceed 95% of the employee's normal weekly earnings;
	• requires it be entirely financed by the employer;
	• requires that on termination, all remaining assets of the plan will be reverted to the employer or be used for payments under the plan or for its administrative costs;
	• requires that written notice of any change to the plan be given to Service Canada within 30 days after the effective date of the change;
	• provides that the employees have no vested right to payments under the plan except during a period of unemployment specified in the plan
	• provides that payments in respect of guaranteed annual remuneration, deferred remuneration or severance pay will not be reduced or increased by payments received under the plan.
	
	Registration must be done before the date of entry into force of the plan. The registration date is based on the date the employer submits the plan, if it meets all the required conditions on that date and all supporting documents have been received.

How this program interacts with other programs	CERB: Currently, there is no legislation or regulation that provides for employer contributions to a SUB to be used to supplement the amount employees receive through the CERB. Therefore, if an employer pays more than $1,000 in SUB to an employee during a period that corresponds to a CERB eligibility period, the employee may have to repay the amounts received as SUB during that period. Work-Sharing: The Work-Sharing agreement cannot provide for the payment of SUB.
Program website	https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers-supplemental-unemployment-benefit.html

Canada Emergency Wage Subsidy (CEWS)	
Objective and summary description of the program	The CEWS is a temporary subsidy to enable employers re-hire employees previously laid off as a result of COVID-19, help prevent further job losses and better position themselves to resume normal operations following the crisis. Under this program, the government provides eligible employers with a subsidy of 75 percent of eligible employee wages. An employee does not have to be actively at work in order for the employer to claim the subsidy in relation to the eligible compensation paid to the employee. In addition, it is possible for an eligible employer to re-hire eligible employees on a retroactive date, pay them retroactively, and claim the wage subsidy on that retroactive salary. The government expects employers to make every effort to pay eligible employees their full salary, but this is not a condition of eligibility.
Eligibility requirements for the employer	The majority of companies doing business in Canada (both large corporations, and small and medium-sized enterprises, charities and not-for-profit organizations), with the exception of public-sector companies. Have experienced a reduction in revenue (15 percent in March, and 30 percent in April and May). However, an employer who qualifies for one claim period will automatically qualify for the following claim period.
Eligibility requirements for the employees	An eligible employee is an individual employed in Canada by an eligible employer during the claim period, except if there was a period of 14 or more consecutive days in that period in respect of which they were not paid eligible remuneration by the eligible employer. Employees who do not deal at arm's length with the employer are eligible, but on special terms and conditions.
Program length	For the time being, the subsidy covers the period from March 15 to June 6, 2020, but the law provides for the possibility that the government may extend it by regulation until September 30, 2020. There are three eligibility periods: • March 15 to April 11, 2020 (eligibility based on the reduction in revenue in March) • April 12 to May 9 (eligibility based on the reduction in revenue in April) • May 10 to June 6 (eligibility based on the reduction in revenue in May)

Benefits or advantages that may be paid under the program	An employer may receive a subsidy of 75 percent of the eligible earnings it pays to each eligible employee, to a maximum of $847 per week. If an eligible employee has experienced a wage reduction of less than 25 percent since the beginning of the crisis, this subsidy is calculated on his or her pre-crisis salary. In the case of employees on paid leave for an entire week, the employer may also claim a subsidy equal to the amounts of the employer's contributions paid to Employment Insurance, the Canada Pension Plan, the Québec Pension Plan and the Québec Parental Insurance Plan for that week. In general, an employee will be on paid leave for one week if the employer pays remuneration for the week, but the employee does not perform any work for the employer during this week.
How to apply	To receive the wage subsidy, eligible employers must apply to the Canada Revenue Agency (CRA) for each qualifying period. All applications must be submitted by September 30, 2020. The application can be submitted using My Business Account or Represent a Client on the CRA website, or using the Web Forms application. For each application, the employer must specify the amount of subsidy requested. The government has created an online tool to help employers calculate this amount. The government has also published a Canada Emergency Wage Subsidy application guide to help employers take the application process step-by-step.
How this program interacts with other programs	Work-Sharing: The total amounts received by employees under the Work-Sharing program will be deducted from the wage subsidy amounts to which the employer is entitled. 10% Temporary Wage Subsidy: The subsidy amounts provided to the employer under the 10% Temporary Wage Subsidy program will be deducted from the subsidy amounts to which the employer is entitled under the CEWS. CERB: Employees who were laid off, but who are retroactively paid their wages through CEWS may no longer be eligible for the CERB and may be required to repay amounts received under this program during an eligibility period.
Program website	https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html

10% Temporary Wage Subsidy for Employers	
Objective and summary description of the program	This is a temporary subsidy set up in the context of the COVID-19 crisis. The 10% Temporary Wage Subsidy for Employers is a three-month measure that will allow eligible employers to reduce the amount of payroll deductions required to be remitted to the Canada Revenue Agency (CRA). As a result, an employer receiving this subsidy will not receive any money, but rather will be allowed to keep some of the payroll deductions that it must make from its employees' salaries rather than remit all of it to the CRA.
Eligibility requirements for the employer	Be a Canadian-controlled private corporation eligible for the small business deduction, a partnership, a non-profit organization or a registered charity; Have an existing Business Number and payroll program account with the CRA on March 18, 2020; and Pay salary, wages, bonuses or other remuneration to at least one eligible employee.
Program length	From March 18 to June 19, 2020.
Benefits or advantages that may be paid under the program	The subsidy paid to the employer is equal to 10 percent of the remuneration that the employer pays to its eligible employees for the duration of the program, up to $1,375 for each eligible employee to a maximum of $25,000 total per employer.
How to apply	Employers do not have to apply for the subsidy. The amount to which an employer is entitled must be calculated by the employer. Once the employer has calculated the subsidy, it can reduce its current payroll remittance of federal income tax it sends to the CRA by the amount of the subsidy.
How this program interacts with other programs	CEWS: The subsidy amounts provided to the employer under the 10% Temporary Wage Subsidy program are deducted from the subsidy amounts to which the employer would otherwise be entitled under the CEWS.
Program website	https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-wage-subsidy-small-businesses.html

Canada Emergency Response Benefit (CERB)	
Objective and summary description of the program	This program is designed to provide quick and simple assistance to employees and self-employed workers who are deprived of their usual income as a result of COVID-19, and to relieve the pressure on the government's employment insurance program, which was not designed to deal with exceptional situations such as COVID-19.
Eligibility requirements for the employees	Workers residing in Canada, who are at least 15 years old; Be in one of the following situations: • Have stopped working because of reasons related to COVID-19 (this includes people who have lost their jobs because of COVID-19; those who cannot work because they are sick, quarantined or caring for someone who is sick; those who have exhausted or are about to exhaust their EI regular benefits and cannot return to work because of COVID-19; and those who have to stay home without pay to care for children at home because of school or daycare closures); • Are eligible for EI regular or sickness benefits or have exhausted EI regular or sickness benefits, or have exhausted EI fishing benefits between December 29, 2019, and October 3, 2020; or • Not have earned more than $1,000 in employment and/or self-employment income for 14 or more consecutive days in the first qualifying period for which an application is made, or not have earned more than $1,000 in employment and/or self-employment earnings in any subsequent qualifying period for which an application is made; Workers who had employment and/or self-employment income of at least $5,000 in 2019 or in the 12 months prior to the date of their application; To be eligible for CERB, the individual must not have voluntarily quit his job, nor refused to return to work without just cause after a layoff.
Program length	The CERB is in effect from March 15 to October 3, 2020. However, a person can only receive the CERB for a maximum of four qualifying periods, which are four weeks each (i.e., for a maximum of 16 weeks).
Benefits or advantages that may be paid under the program	$2,000 per qualifying period, equivalent to $500 per week. This is a fixed amount that is the same for all individuals, regardless of their pre-crisis income level.
How to apply	Individuals eligible for the CERB must apply to Service Canada **or** the Canada Revenue Agency (not both). A new application must be submitted for each period of eligibility.
How this program interacts with other programs	CEWS: Employees who are retroactively recalled to work through CEWS may no longer be eligible for the CERB and may be required to reimburse amounts paid under this program. SUB: Currently, the federal government does not allow employer contributions to a SUB to be used to supplement the amount employees receive through the CERB.
Program website	https://www.canada.ca/en/services/benefits/ei/cerb-application.html

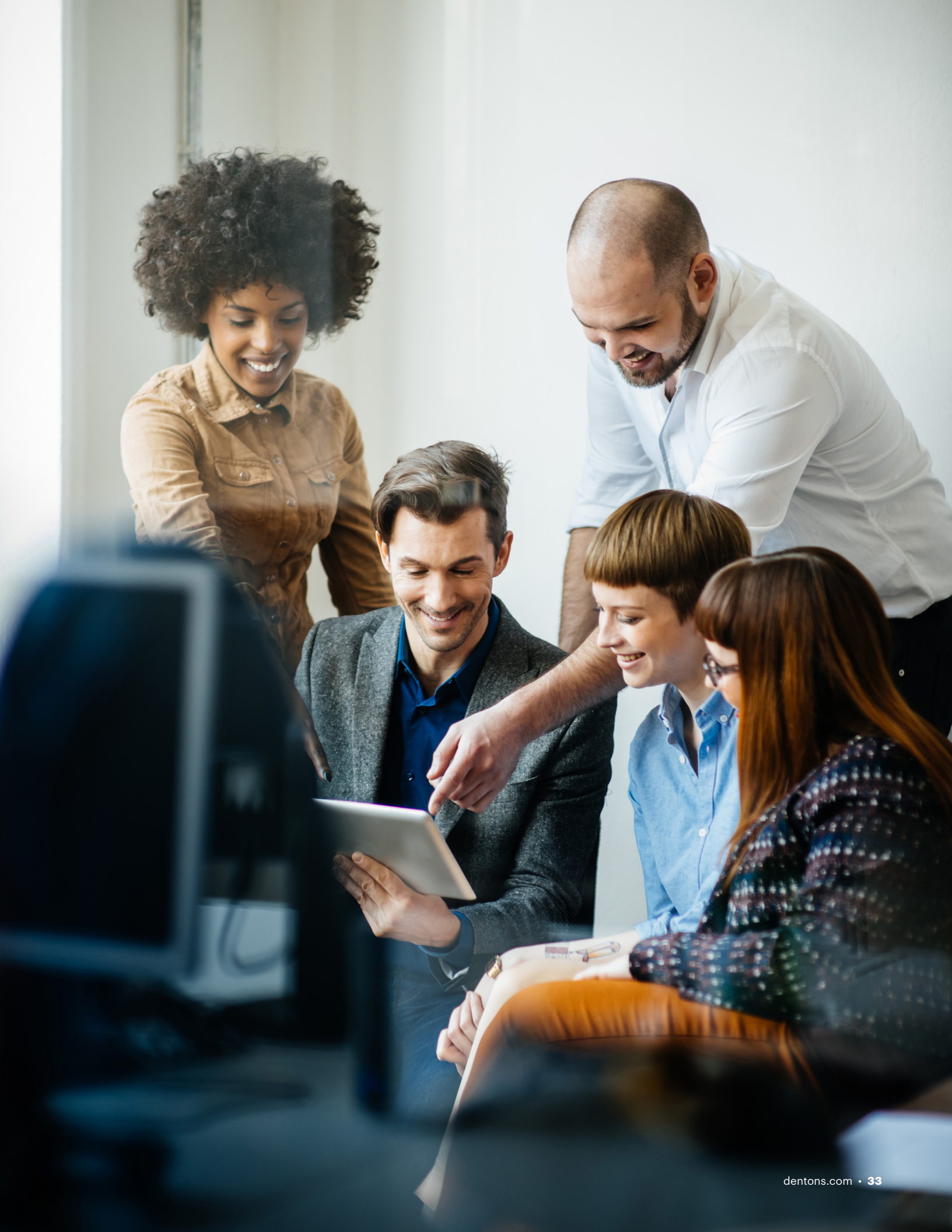
Provincial programs (Québec)

Incentive Program to Retain Essential Workers (IPREW)	
Objective and summary description of the program	This program is designed to encourage individuals working essential jobs during the COVID-19 pandemic, whose wages are below the CERB to remain employed for the duration of the pandemic. Under this program, eligible individuals will be able to obtain benefits to offset the difference between their wage and the amounts they would receive if they were receiving the CERB.
Eligibility requirements for the employees	Working part-time or full-time in one of the essential service sectors during the program period; Receiving gross wages of $550 or less per week; Earning an annual employment income of at least $5,000 for 2020 and a total annual income of no more than $28,600 for 2020; Be at least 15 years old when you apply for assistance under the IPREW; and Were a resident in Québec on December 31, 2019, and plan to reside in Québec throughout 2020.
Program length	From March 15 to October 15, 2020.
Benefits or advantages that may be paid under the program	The program provides $100 for each week of qualifying work, up to a maximum of 16 weeks. This means that, in addition to their wages, a worker eligible for the full 16-week period could receive a total of $1,600.
How to apply	Eligible individuals must apply online, on the Revenu Québec page provided for this purpose. All applications must be submitted between May 19 and October 15, 2020.
How this program interacts with other programs	CERB / PATT-COVID-19: The employee must not have received any monies in respect of the CERB or PATT COVID-19 for a week for which the employee is applying under the IPREW. CEWS: The fact that the employer has claimed the CEWS for the salary paid to an employee in a given week does not affect the employee's eligibility for the IPREW.
Program website	https://www.revenuquebec.ca/en/press-room/news/details/167331/2020-04-03/

Concerted Action Program for Maintaining Employment (officially the *Programme d'actions concertées pour le maintien en emploi*) (PACME)	
Objective and summary description of the program	This program is designed to provide support to businesses that have experienced a decline in their operations as a result of the COVID-19 pandemic. It aims to provide direct financial support to businesses in order to promote good human resources management practices, as well as training, whether onsite, online or remotely, so they can use the current slow down to upgrade the skills of their workforce and be ready for economic recovery. The program will provide support to businesses that will have to make changes, in the short to medium term, to their usual activities in order to continue their operations. It also aims to support businesses that will want to resume their activities and increase their business revenues once the current crisis has subsided.
Eligibility requirements for the employer	Eligible businesses are those whose usual activities have been affected by the COVID-19 pandemic whether by the suspension, decrease, increase or diversification of these activities.
Program length	Projects will be accepted until September 30, 2020, or until the budget envelope of $100 million is exhausted.
Benefits or advantages that may be paid under the program	Financial assistance in the form of reimbursement of eligible expenses for business training projects: 100 percent of expenses of $100,000 or less; 50 percent of expenses between $100,000 and $500,000. Eligible expenses under the program: • The wages of employees in training (excluding payroll taxes), up to a maximum of $25 per hour; • Professional fees for consultants or trainers, up to $150 per hour; • Indirect costs for trainers (travel, meals, accommodation, etc.); • Indirect costs for employees in training (travel, meals, accommodation, etc.); • Development, adaptation and purchase of teaching and learning materials; • Equipment and supplies needed to carry out the activities; • Development and adaptation of training content; • The transfer from face-to-face training to online training; • Registration fees or other costs related to the use of a platform; • If applicable, costs related to management and administration activities (bank charges, equipment, supplies needed to carry out the activities, etc.) assumed by the delegated organization, up to 10 percent of eligible costs.
How to apply	An application must be submitted before September 30, 2020, using the online form provided for this purpose.
How this program interacts with other programs	This program can be combined with all other measures announced by the federal or provincial governments during the period in question.
Program website	https://www.quebec.ca/entreprises-et-travailleurs-autonomes/programme-actions-concertees-pour-le-maintien-en-emploi-pacme-covid-19/#c50703 (in French only)

Credit for contribution to the Health Service Fund	
Objective and summary description of the program	To complement the Canada Emergency Wage Subsidy (CEWS), the Québec government has established a credit for employers' contribution to the Health Services Fund (HSF). The amount of this credit will be equal to the total amount of the contribution to the HSF paid by the employer on the wages paid to employees on paid leave for the entire week for which the credit is claimed.
Eligibility requirements for the employer	Must qualify for the CEWS for the period for which the credit is claimed; Must have an establishment in Québec.
Eligibility requirements for the employees	Be on paid leave for the entire week for which the credit is claimed. In general, an employee will be on paid leave for one week if the employer pays remuneration for the week, but the employee does not perform any work for the employer during the week.
Program length	From March 15 to June 6, 2020, according to the following three eligibility periods: • March 15 to April 11, 2020 • April 12 to May 9, 2020 • May 10 to June 6, 2020
Benefits or advantages that may be paid under the program	An employer may receive a credit equal to the amounts it contributed to the HSF on the wages paid to employees on paid leave for the entire duration of the week for which the credit is claimed.
How to apply	Eligible individuals must apply online, on the Revenu Québec page provided for this purpose. All applications must be submitted between May 19 and October 15, 2020.
How this program interacts with other programs	CEWS: This program is based on the CEWS eligibility rules, but the employer does not have to receive CEWS payments to be eligible for the credit.
Program website	http://www.finances.gouv.qc.ca/documents/Bulletins/en/BULEN_2020-7-a-b.pdf

* Please note that the Temporary Help Worker Program (PATT COVID-19), which was announced by the Government of Québec on March 16, 2020, ended on April 10, 2020. From the outset, this program ceased to be offered when other financial assistance programs were created to cover the same needs. The Government of Québec believes that the Canada Emergency Wage Benefit meets the needs of the population and that, consequently, PATT-COVID-19 no longer needs to be maintained.



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