



UPDATE: CANADA EMERGENCY WAGE SUBSIDY ("CEWS")

CEWS – General Summary

On **April 11, 2020**, the CEWS was enacted into law by the Federal government. An overview of the program is provided below as well as a summary of the important decisions that need to be made. Certain aspects of the program are more fully detailed in our [bulletin issued on April 8, 2020](#). Due to the complex nature of these rules, readers are urged to seek out their Richter professionals so that their impact can be properly interpreted.

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Subsidy Computation

- Employers can receive a subsidy with respect to wages paid pertaining to the period March 15, 2020 and June 6, 2020.
- The subsidy can be claimed in respect of employees (whether full or part-time) if they have been paid by their employer for a period of 15 or more consecutive days during each of the following three distinct Claim Periods:
 - March 15th to April 11th;
 - April 12th to May 9th, and
 - May 10th to June 6th.
- The amount of the subsidy is determined by formula and is based on the wages paid both before and after the crisis; in all cases the maximum amount will be \$847 per week per employee. For non-arm's length employees, there is an added requirement that they must have been employed between January 1, 2020 to March 15, 2020.
- For those employees on paid leave, employers can also receive an additional refund of 100% of the employer-paid portion of EI, CPP, QPP and QPIP.
- The Finance Canada website indicates that employers are expected to make their best effort to top-up salaries to their pre-crisis levels.

Eligibility

- All businesses, non-profits and charities, regardless of size, can claim the CEWS.
- The ability to make a claim is based on an employer's revenue decline in the months of March (15%), April (30%) and May (30%). Employers must use one of the following comparative benchmarks to determine the revenue decline.
 - 2020 monthly revenue compared to the revenue of the same month in 2019; or
 - 2020 monthly revenue compared to the average revenue for January and February 2020.
- Once chosen, the comparative benchmark must continue to be used for the entire duration of the CEWS program.
- If an employer was not carrying on business on March 1, 2019, the comparative benchmark will automatically be the average revenue for January and February 2020.
- Where an employer meets the revenue decline test for a specific Claim Period, they will be deemed to have met the revenue decline test for the immediately following period. For example, if the test was met for March, the employer will be eligible for the CEWS for both the first and second Claim Periods.
- Individuals who have the principal responsibility for the financial affairs of an employer must attest to the fact that the CEWS claim is complete and accurate in all material respects. This would be a senior level person in the business such as a CFO.
- Employers must have had a payroll number registered on March 15, 2020.

Computing Revenues for the Revenue Decline Test

- Revenues can be computed using the accrual method of accounting or, if an employer so elects, the cash method.
- The method selected must be used consistently for each Claim Period.
- Revenues generally include cash and amounts receivable in the course of an employer's ordinary activities but excludes extraordinary items and amounts received from non-arm's length sources.
- In the case of NPOs, revenues include membership fees, and, for registered charities, include gifts. These entities can choose to include or exclude government funding.
- Revenues can be calculated on a consolidated basis for each member of an "affiliated group", provided that all members of the group make a joint election. Please note that an "affiliated group" has a complex definition for tax purposes.
- An employer who receives more than 90% of its revenues from one or more non-arm's length parties may be still able to claim the CEWS if certain conditions are met and if certain elections are made.
- There are special rules for corporate groups that normally prepare consolidated financial statements as well as joint ventures.

Application Process

- Employers can apply for the subsidy through the Canada Revenue Agency ("CRA") *My Business Account* portal or through a web-based application.
- Employers will have until September 30, 2020 to make a claim.
- The application process should be operational in the next two to four weeks and amounts are scheduled to be disbursed by the CRA in approximately four weeks. Given the time lag, employers will have to temporarily finance payroll.
- To the extent that an employer is not yet registered with CRA *My Business Account*, they should do so as soon as possible.

Anti-Avoidance Rule

- Where revenues have been artificially reduced for the purpose of claiming the CEWS, it is possible that a broad anti-avoidance rule could apply, which would result in the repayment of the amount received under the CEWS plus a 25% penalty.

IMPORTANT Employer CEWS Decision Items

- **Choice of Comparative Benchmark:** An employer must select whether the same month of the previous year or the average of January and February 2020 revenue is the most beneficial base for the revenue decline test.
- **Choice of Accounting Method:** An employer must select whether the cash or accrual method is the best way of measuring a revenue decline.
- **Consolidation Method for Affiliated Groups:** Entities within an “affiliated group” must decide whether to claim the CEWS by consolidating their revenues or making an entity-by-entity claim. If a consolidated basis is selected, all members of the group must make a joint election.
- **Non-Arm's Length Election:** If an entity receives all or substantially all of its revenues from one or more non-arm's length parties, it may be able to claim the CEWS based on the revenue decline of these non-arm's length parties, provided that all parties make a joint election.

Other Matters

- It is intended that the Canada Emergency Response Benefit (“CERB”) (\$2,000/month) and the CEWS cannot be claimed at the same time in relation to the same employee. The Federal government has indicated that they are working on a mechanism to limit duplicative claims, such as a process permitting an employee to cancel and repay their CERB claim. Additional details regarding this mechanism will be provided when known.
- Given that the CEWS is a high-trust program and contains penalties for non-compliance, it is highly recommended that employers keep records documenting their revenue reduction, remuneration paid to employees as well as their decision-making process in support of their CEWS application.
- The names of the employers that apply for the CEWS may be made public by the CRA. It is not clear why this has been included in the legislation.
- Any claim made under the Temporary Wage Subsidy (referred to as the 10% wage subsidy) and/or a Work Sharing Program will reduce the benefit that an employer is entitled to receive under the CEWS.
- Any amount received by an employer under the CEWS program remains taxable to it and will also reduce remuneration expenses for the purposes of certain tax credits (e.g. SR&ED).