

COVID-19 Emergency Response Act Receives Royal Assent

Date : March 26, 2020

On March 25, 2020, the [COVID-19 Emergency Response Act](#) (Bill C-13) received Royal Assent. The legislation outlines broad amendments and measures to address wide-ranging economic and other issues arising as a result of the COVID-19 pandemic. We have included below some of the key provisions that are most relevant for employers.

Canada Emergency Response Benefit Act

The *COVID-19 Emergency Response Act* enacts the *Canada Emergency Response Benefit Act* (the “Act”), to provide for the Canada Emergency Response Benefit (CERB). This benefit replaces both the Emergency Care Benefit and the Emergency Support Benefit previously announced by the Government of Canada which we detailed in a previous Focus alert, [Canada's COVID-19 economic response plan](#).

While not specifically set out in the Act, the federal government notes that the new CERB would cover workers who:

- must stop working due to COVID-19 and do not have access to paid leave or other income support.
- are sick, quarantined, or taking care of someone who is sick with COVID-19.
- are working parents who must stay home without pay to care for children that are sick or need additional care because of school and daycare closures.
- still have their employment but are not being paid because there is currently not sufficient work and their employer has asked them not to come to work.
- wage earners and self-employed individuals, including contract workers, who would not otherwise be eligible for Employment Insurance.

Qualifying for the Benefit

Employees or self-employed workers will qualify if they cease working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for payment, and do not receive in respect of those consecutive days on which they have ceased working:

- income from employment or self-employment;

- unemployment benefits (EI benefits) under the *Employment Insurance Act* (“EIA”);
- pregnancy or parental benefits/allowances paid under a provincial plan; or
- any other income prescribed by regulation.

To be eligible, workers must:

- be at least 15 years of age;
- be resident in Canada;
- for 2019 or in the 12-month period preceding the day on which they make an application for CERB, have a total income of at least \$5,000 (or another prescribed amount). Total income includes:

- employment or self-employment income;

- pregnancy or parental EI benefits; and

- pregnancy or parental benefits/allowances paid under a provincial plan.

The benefit will not be provided to workers who voluntarily quit their employment.

How Much Workers Will Receive and How Long Benefits Will Last

The amount of income support payment is to be fixed by regulation. However, the federal government has announced that the CERB will provide a taxable benefit of \$2,000 for up to four (4) months (16 weeks as specified in the Act). That period may be changed by regulation. The CERB would be paid every four (4) weeks and be available from March 15, 2020 until October 3, 2020.

How Workers Can Apply

The federal government has indicated that the benefit will be accessible in early April through a secure web portal. Workers will also be able to apply through an automated telephone line or a toll-free number.

Workers Receiving Employment Insurance

According to the federal government's news release, workers who are already receiving EI regular and sickness benefits as of March 25, 2020 would continue to receive their benefits and should not apply for the CERB. We will be releasing a Focus Alert shortly regarding Employment Insurance, which will discuss these and other issues in depth.

We will continue to update Focus readers on further details about the CERB as we continue to review the legislation and monitor updates from the federal government.

New and Amended Leaves under the *Canada Labour Code*

The *COVID-19 Emergency Response Act* makes various amendments to leave and other related provisions in the *Canada Labour Code* (the "*Code*").

COVID-19 Leave

The amendments also create a new "Leave Related to COVID-19" ("COVID-19 Leave") for employees working in federally regulated workplaces. An employee will be entitled to up to 16 weeks of unpaid, job-protected leave, or such other number of weeks as fixed by regulation, if they are unable or unavailable to work for reasons related to COVID-19.

An employee who intends to take this leave must give written notice to the employer as soon as possible of the reasons for the leave, including the intended length (and any change in the length of the leave).

An employer may require the employee to provide a written declaration in support of the reasons for the leave, and of any change in the length of the leave.

General requirements applicable to other *Code* leaves also apply to COVID-19 Leave, such as:

- An employee is entitled, on written request, to be informed of employment, promotion or training opportunities that arise during the period when the employee is on leave for which the employee is qualified;
- Prohibition of reprisal for taking leave:
 - An employer cannot dismiss, suspend, lay off, demote or discipline an employee because the employee intends to take or has taken COVID-19 leave. An employer cannot take such leave into account in any decision to promote or train the employee;
 - An employer may assign an employee to a different position, with different terms

- and conditions of employment, if the employee after the leave is unable to perform the work performed by the employee prior to the absence;
- Continuity of benefits – pension, health and disability benefits, and seniority continue during the period of the leave:
 - Where contributions are required from an employee, the employee is responsible for those contributions during the leave unless the employee notifies the employer that they wish to discontinue contributions;
 - An employer who pays benefit contributions must continue to do so during the leave;
 - The ability to interrupt or postpone vacation or to interrupt certain leaves; and
 - Deemed continuous employment during the period of leave for the purposes of calculating benefits.

The COVID-19 Leave is of limited duration and will be repealed on October 1, 2020.

Quarantine Leave

The existing medical leave provisions of the *Code* are amended to allow for a medical leave of absence of up to 16 weeks as a result of quarantine. These changes will only come into effect on October 1, 2020, the same date that the COVID-19 Leave ends.

Reprisals taken by employers against employees in respect of medical leave as a result of quarantine or COVID-19 Leave can be the subject of a reprisal complaint under the *Code*.

Temporary Removal of Medical Certificate Requirements and Documentation for Certain Leaves

Compassionate Care Leave, Leave Related to Critical Illness and Medical Leave entitlements can be exercised without providing a certificate issued by a health care practitioner. The requirements in those sections for such a certificate are deemed to be of no force and effect.

The requirement to provide documentation in support of the reasons for taking Leave Related to Critical Illness, or changing the length of that leave, is not required.

These changes will be repealed on September 30, 2020.

Amendments to the Employment Insurance Act

Interim Orders by the Minister

The *COVID-19 Emergency Response Act* amends the *EIA* to provide the Minister of Employment and Social Development with the authority to make interim orders with the consent of the Minister of Finance and, in some cases, the additional consent of the President of the Treasury Board, in order to mitigate the economic effects of COVID-19.

The interim orders can:

- add provisions, including provisions that provide for new benefits, to the *EIA* or any regulation made thereunder;
- adapt provisions of the *EIA* or any regulation made thereunder; or
- provide that any provisions of the *EIA* or a regulation made thereunder do not apply in whole or in part.

An interim order will cease to apply on the Saturday after the first anniversary of the day on which the interim order takes effect, unless an earlier date is specified in the order, or it is repealed before that time.

The power to make interim orders cannot be exercised after September 30, 2020.

Medical Certificates

References in the *EIA* or regulations to a certificate issued by a medical doctor, other medical professional, medical practitioner or nurse practitioner are deemed to be of no effect. If benefits would have been payable to a claimant had a certificate been issued, then the claimant will receive the benefits if the Canada Employment Insurance Commission (“Commission”) is satisfied that the claimant is entitled to them. The Commission is authorized to apply the provisions of the *EIA* and regulations in the manner that it considers most appropriate in order to apply these changes.

These changes apply until September 30, 2020.

Temporary Wage Subsidy – Income Tax Remittance Reduction

The *COVID-19 Emergency Response Act* provides eligible employers with a temporary wage subsidy for a period of three (3) months in the form of deemed income tax remittances. Eligible employers include those eligible for the small business deduction, non-profit organizations and

registered charities.

For the period of March 18, 2020 to June 19, 2020, if an eligible employer pays salary, wages or other remuneration to an employee which requires the employer to deduct or withhold amounts and remit them to the Receiver General on account of the employee's taxes, the employer is deemed to have made a remittance to the Receiver General. This allows the employer to benefit by retaining the amount of remittance that would normally have been provided to the Receiver General. The particular amount retained by the employer pursuant to the deemed remittance would be determined in accordance with a formula set out in the legislation.

In Our View

The legislation aims to provide support to employees and employers during a time of great upheaval in Canada and across the world. The new income supports, new leaves, authority for flexibility in administering EI benefits and removal of documentary requirements for leave and benefit entitlements provide flexibility that will likely be required in this time of uncertainty caused by the COVID-19 pandemic.

However, the provisions may pose some challenges for employers as well. For example, the broad scope of the new leaves, coupled with the removal of documentation requirements, may pose difficulties for employers in ensuring that these new leaves are properly used.

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