

FREQUENTLY ASKED QUESTIONS REGARDING THE CANADA EMERGENCY WAGE SUBSIDY (“CEWS”)

On April 8, 2020, Gowling WLG (Canada) LLP hosted a webinar and received many questions. We have attempted provide answers to the most frequently-asked questions, based on the information we have as of April 9, 2020.

Canada Emergency Wage Subsidy (“CEWS”)

1. Does the CEWS only apply to employees who are laid off?

If your business qualifies for CEWS, it applies to all **remuneration** paid to employees, regardless of whether they are working or not. If you laid off employees without pay, you can only apply for CEWS if those employees are put back on payroll.

2. Do all employees receive the CEWS or only those that were laid off?

Employers, and not employees, receive the CEWS. Eligible employers pay employees first and then apply for the CEWS and receive reimbursement later.

3. How are “employees” defined with respect to the CEWS?

An employee is a worker who remuneration is subject to payroll deductions and T4 reporting.

4. How would employers calculate the pre-crisis weekly remuneration for hourly employees with non-standard work weeks?

Employers should use a weekly average based on remuneration paid between January 1, 2020 through to March 15, 2020.

5. Can employers receive the CEWS in respect of employees that receive only commission?

Yes. Assuming employers meet the other eligibility requirements, they may apply for the CEWS in respect of commission-only employee. See also the answer to question #4 above.

6. Is there a wage subsidy like the CEWS available to independent contractors?

No. Currently, the CEWS does not apply to the self-employed. These individuals may be eligible for the CERB.

7. Do owner-managers or sole proprietors qualify for the CEWS and are there more restrictive requirements for them?

Assuming they meet the other eligibility requirements, owner-managers can qualify for the CEWS if they were on payroll (i.e., receiving a salary, wages, commission, etc.) before March 15, 2020. The CEWS currently does not apply to owner-managers who only receive dividends.

8. Should an owner-manager of a Canadian-controlled private corporation apply for the Canada Emergency Response Benefit or the CEWS?

Usually the CEWS is better, but every situation is different. You should consult with an accountant or lawyer to determine which program is most advantageous for you.

9. Do partners from partnerships qualify for the wage subsidy if they receive partnership draws and not salaries?

No. Partners are not considered employees.

10. I receive a salary from my professional corporation. Am I eligible for the CEWS?

You are likely eligible for the CEWS as long as you were on payroll prior to March 15, 2020 and you meet all of the other eligibility requirements.

11. Can corporations claim the CEWS in respect of directors' fees?

It is unclear at this time.

12. Are employers required to top up employees' remuneration?

The CEWS program requires employers to attest to having made "best efforts" to top up employees' remuneration. Given fixed operating costs and other obligations, employers may not be able to top up.

13. Are employers required to demonstrate a best effort to top up employees' remuneration by 25% of the \$58,700 maximum subsidy or top up employees' remuneration to pre-crisis levels?

That is currently unclear, but it appears to be the latter.

14. How do you reconcile employers having to demonstrate a best effort to top up their employees' remuneration with the fact that the CEWS is based on actual remuneration paid?

An employer can only receive reimbursement of wages paid, **up to** the levels described in our seminar. Please review our [newsletter](#) for more information.

The difference between the subsidy and the employee's regular wages is expected to be topped up by employers on a "best efforts" basis.

15. The federal government announced changes to some of the eligibility requirements in March and April. Will these changes apply in respect of payments made to employees after March 15, 2020?

Yes.

16. We laid off our employees before the federal government announced the CEWS. Can we utilize the CEWS for our remaining staff, if we meet the eligibility requirements, without having to recall our laid off employees?

Yes. Also, if you put your laid off employees back on payroll, your business will be eligible for the subsidy payment, if it otherwise qualifies. Your business may also receive reimbursement of employer CPP/EI premiums paid for employees who are laid off, not working and put back on payroll.

17. We want to pay our employees that are currently working 100% of their pre-crisis salary. We want to recall employees that we have laid off and pay them 75% of their pre-crisis salary. However, we do not want the laid off employees to return to work. Can we receive the CEWS in respect of both categories of employees?

Yes, as long as you meet the other eligibility requirements.

18. We are currently paying our employees 75% of their wages even though they are not working. Can we apply for the CEWS in respect of such employees if we are otherwise eligible?

Yes.

19. Can we apply for the CEWS in respect of employees who are returning from maternity leave if we are otherwise eligible?

Yes.

20. Can we apply for the CEWS in respect of employees receiving sick pay or vacation pay if we are otherwise eligible?

Yes.

21. Can employers combine the CEWS and the CERB such that laid off employees receive the CERB (and no income from the employer) and the employer receives the CEWS in respect of employees that it continues to employ and remunerates?

Yes. To be clear, however, an employer is disentitled from receiving CEWS with respect to an employee receiving CERB for the period in respect of which the employee received CERB payments. You can have some employees on CERB and others who continue in your employment. You can only apply for CEWS for the latter.

22. Can employers reduce salaries during the 12-week period that the CEWS is in effect, if it results in a more favorable subsidy calculation?

Yes. However, recall that employers are required to demonstrate a best effort to top up employees' remuneration. There may be employment law implications with respect to the reduction of pay that are outside the scope of this FAQ.

23. Can businesses collect the CEWS for non-arm's length employees who are paid a salary and provided with a T4 slip at the end of the year?

Yes, with respect to existing non-arm's employees on payroll. No, with respect to new or additional non-arm's employees.

24. If an employee has been laid off for 2 weeks and is called back and during their layoff, they received a CERB payment, what happens to the CEWS.

The issue is whether the EMPLOYER is eligible for the subsidy. Currently, the employer cannot claim CEWS for an employee, if the employee has been without remuneration for more than 14 days in the eligibility period. The employee could apply for CERB.

25. Do employers need to demonstrate that the reduction in their gross revenue was a result of COVID-19?

No.

26. Is an employer required to demonstrate a reduction in revenue in each month of March, April and May or in these three months combined?

Employers must show a reduction in gross revenue in each month separately. Employers may average their gross revenue for the months of January and February and use that average as a benchmark to determine whether there was a gross revenue reduction in each of March, April, and May. Please refer to the Department of Finance's [bulletin](#) for more information. Please also review our more detailed [newsletter](#) for more information.

27. What if an employer can demonstrate the requisite revenue reduction in March, April and May 2020 as compared to the same period in 2019? Can an employer still use that measure even though the federal government has indicated it will allow employers to use new metrics to calculate their revenue reduction?

Yes, but once a metric is chosen by the employee, the same metric must be used for subsequent eligibility periods.

28. Some corporations recognize revenue on a cash basis while others recognize revenue on an accrual basis. As a result, a current reduction in commercial activity for some corporations will result in a revenue reduction in six months. Does the calculation of revenue reduction for the CEWS account for this variation?

Initial guidance was that employers had to use their normal accounting method. A subsequent [press release](#) stated that employees can use the cash method or the accrual method, consistently through all eligibility periods. This may assist certain employers.

Are corporations that receive SR&ED funding excluded from the CEWS?

No.

29. Can an employer participating in the Work-Sharing Program apply for the CEWS?

Yes, as long as the employer meets the other eligibility requirements. However, employment insurance benefits paid to employees through the Work-Sharing Program will reduce the amount of the CEWS.

30. Does the 10% subsidy reduce the amount that employers are required to remit in respect of employees' wages or salaries?

Yes.

31. Can an employer apply for both the 10% wage subsidy and the CEWS?

Yes, as long as the employer meets the requirements for both programs. The 10% wage subsidy will, however, reduce the amount of the CEWS. Employers should consult with an accountant or lawyer to determine if participating in both programs is appropriate in their particular circumstances.

32. If an employer has applied for 10% wage subsidy, do they automatically receive the CEWS when it comes into effect?

No. Employers must apply separately for the CEWS. The criteria for the 10% wage subsidy is different than the criteria for the CEWS.

33. How would employers calculate the pre-crisis weekly remuneration for hourly employees with non-standard work weeks?

Employers should use a weekly average based on remuneration paid between January 1, 2020 through to March 15, 2020.

34. What type of records will be required to apply for the CEWS?

That is currently unclear. However, we expect that employers will be required to substantiate the revenue reduction and the remuneration paid for all relevant periods.

35. If employees were laid off on March 20, can an employer apply for the CEWS for remuneration paid to such employees between March 15, 2020 and March 20, 2020?

Yes, as long as the employer meets the other eligibility requirements.

36. Can an employer claim the CEWS in respect of employees hired after March 15, 2020?

Yes, if the employer meets the other eligibility requirements and the employees are arm's length hires (i.e. not shareholders, owners or their family members).

37. Can an employer increase or reduce employees' salaries and then apply for the CEWS?

Yes, as long as the employer meets the other eligibility requirements. However, the CEWS benefit is limited to 75% of the average weekly pre-COVID 19 compensation you paid a specific employee between January 1 to March 15, 2020, up to a maximum of 75% of \$57,800. Therefore, the increase in compensation will be disregarded for your CEWS application. Please also consult with your lawyer about the possible implications of reducing employees' salaries.

38. If an employer reduces its employees' wages by 20% as a result of COVID-19, can such an employer receive the CEWS based on the employees' pre-crisis wages?

The calculation will be based on actual amounts paid to employees.

39. If we have laid off union employees, can we hire them back and apply for the CEWS?

Yes. You should review your collective agreement and discuss with the appropriate union officials as well.

40. Are employees required to work a minimum number of hours in order for an employer to claim the CEWS in respect of remuneration paid to such employees?

No.

41. Is the amount of the CEWS based on the number of individuals employed on or prior to March 15, 2020?

The CEWS is based on remuneration paid to employees during the 12-week period that began on March 15, 2020 on a per employee basis. Please refer to the Department of Finance's [bulletin](#) for more details. Please also review our more detailed [newsletter](#) for more information.

42. If an employee received a raise, but that raise was not processed between January 1, 2020 and March 15, 2020, can an eligible employer use that increased amount in calculating the CEWS?

Probably not. We await the final regulations and legislation.

43. We are currently ineligible for the CEWS but expect to become eligible in the future. Will we be able to apply for the CEWS at a later date?

The CEWS is in effect for 12-weeks ending June 6, 2020 divided into 3 eligibility periods. If your eligibility arises in period 2 or 3, you can apply for those periods. It is currently unclear, however, whether the federal government will extend the duration of the program. Please refer to the Department of Finance's [bulletin](#) for more details.

44. Can a Canadian employer receive the CEWS in respect of remuneration paid to its U.S. employees?

No. Employers can only claim the CEWS in respect of remuneration paid to employees who are employed **in Canada**.

45. Can foreign-owned companies apply for the CEWS?

Yes, if all other eligibility requirements are met.

46. Do employer-paid contributions include contributions to registered retirement savings plans?

Currently, probably not. We await the final regulations and legislation.

47. When will the federal government pass legislation implementing the CEWS?

Parliament is sitting on Saturday, April 11, 2020 and we anticipate it will be passed shortly.

48. When can employers apply for the CEWS?

Prime Minister Justin Trudeau has indicated that the federal government hopes to make the online portal available in three to six weeks, which translates to late April/May.

49. When can employers expect to receive the CEWS?

Unclear. It is noteworthy however that CERB payments were being processed in 48 to 72 hours after applications were made.

50. How is the CEW paid?

The federal government provides employers with a direct payment, preferably by way of direct deposit through the employer's CRA account or a cheque. For more information about setting up direct deposit with CRA, please click [here](#)

Canada Emergency Response Benefit (“CERB”)

51. Some of our employees applied for the CERB before we decided to proceed with the Canada Emergency Wage Subsidy. Our employees are now receiving employment income as well as payments through the CERB. How do our employees stop the CERB and pay back amounts received from the federal government?

We await clarification.

If an employee was laid off before March 15, can they apply for the CERB?

No.

52. If an employee is returning from maternity leave but their employer is closed for business, can that employee apply for the CERB?

Yes, if the employee meets the other eligibility requirements and was scheduled to start work on or after March 15, 2020.

53. Can individuals who are on compassionate care leave apply for the CERB?

In some cases, individuals who are eligible for compassionate care leave may also be eligible for the CERB. However, in general, individuals who are on compassionate care leave would receive regular employment insurance benefits.

54. We laid off some of our employees but would like for them to return to work for short periods of time. Would that affect their eligibility for the CERB?

Currently yes. Prime Minister Justin Trudeau indicated that employees may work for a limited number of hours and still receive benefits under the CERB. We expect more information on this in the coming weeks.

55. What are the consequences of paying employees supplemental benefits under the Supplemental Benefits Program if the employees are receiving the CERB?

Currently, employees would be considered to be receiving income from employment and would become ineligible for the CERB.

Work-Sharing Program

56. Does employment insurance subsidize the total amount of salary or wages paid to an employee via the Work-Sharing Program?

No. Employment insurance is limited to 55% of an employee's remuneration to a maximum of \$54,200 per year. It would be pro-rated to reflect partial layoff/reduced hours.

57. What if an employer has only a few employees with a specialized skillset?

A work-share unit can be comprised of as little as two people.

58. Are sole proprietors that have employees eligible to participate in the Work-Sharing Program?

Yes, the employees of a sole proprietor are eligible to participate in the Work-Sharing program.