Goodmans LLP Update

Changes to Eligibility Criteria for Canada Emergency Wage Subsidy Announced

Today, Prime Minister Justin Trudeau announced changes to the eligibility criteria for the Canada Emergency Wage Subsidy (CEWS) to make it easier for businesses affected by COVID-19 to access the CEWS and rehire or retain employees as the economic slowdown continues. Additional details of the CEWS were announced this afternoon in the Ministry of Finance Department's backgrounder, including details of the government's plan to expand the CEWS to include a program that would refund certain employer-funded payroll contributions, including Employment Insurance and Canada Pension Plan contributions.

While the full details of the CEWS may not be available until the legislative framework for the CEWS is tabled in Parliament, here is what we have learned today:

Changes to CEWS

As discussed in our previous Update, *What We Know About Canada's Emergency Wage Subsidy So Far*, the federal government previously announced the CEWS would be available to eligible employers that see a drop of at least 30 per cent of their revenue, determined by measuring the monthly revenues of the employer, year-over-year, for the calendar month in which the period began.

Today, the federal government announced the following changes to the CEWS eligibility criteria to make it easier for businesses affected by COVID-19 to access the CEWS:

1. *Reference Period for Calculating Revenue Reduction.* Employers will now have the option of using (i) a year-over-year reference period or (ii) a reference period of the average of revenues for January, 2020 and February, 2020 for the purpose of determining eligibility for the CEWS on the basis of a revenue reduction. The change to the reference period is intended to make it easier for early start-ups, high-growth firms, sectors that faced difficulties in 2019, non-profits and charities, as well as employers established after February, 2019, to access the benefit. Employers would select the general year-over-year approach or this new alternative approach when first applying for the CEWS, and would be required to use the same approach for the entire duration of the program.

2. *15 per cent Revenue Reduction for Month of March.* Employers will now only need to demonstrate a 15 per cent reduction in revenues for the month of March compared to March 2019, or compared to the average of revenues for January, 2020 and February, 2020. This change is intended to assist employers that did not experience an impact from COVID-19 until late March, once government restrictions had been fully implemented.

3. *Not-for-profits and Charity Reference Period.* Not-for-profits and charitable organizations will have the option of including or excluding government funding for the purposes of making revenue calculations.

The federal government also announced the following additional details relating to CERB:

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1. *Accounting Method.* Employers will be allowed to calculate their revenues under the accrual method or the cash method, but not a combination of both. Accordingly, the accounting method that an employer selects when first applying for the CEWS, will be the only accounting method the employer will be able to use for the duration of the program.

2. *Calculating Pre-Crisis Remuneration.* The pre-crisis remuneration for a given employee would be based on the average weekly remuneration paid between January 1 and March 15 inclusively, excluding any seven-day periods in respect of which the employee did not receive remuneration.

3. *Interaction with CERB.* To ensure the Canada Emergency Response Benefit (CERB) applies as intended, the government will consider implementing an approach to limit duplication between the CERB and the CEWS. This could include a process to allow employees rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount.

4. *Penalties.* Employers that claim the CEWS and that do not meet the eligibility requirements will be required to repay any amounts paid to them under the CEWS. In the case of fraudulent claims, penalties may include fines or even imprisonment, and employers that engage in artificial transactions to reduce revenue for the purposes of claiming the CEWS, will be subject to a penalty equal to 25 per cent of the value of the subsidy claimed, in addition to the requirement to repay the full subsidy that was improperly claimed.

Expansion to CEWS

In addition to the changes to the existing CEWS program, the government announced its plan to expand the CEWS by introducing a new 100 per cent refund for certain employer paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund would cover 100 per cent of employer-paid contributions for eligible employees for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees. The refund would not be subject to the maximum benefit of $847 per week that an eligible employer may claim in respect of CEWS and there would be no overall limit on the refund amount an eligible employer may claim.

Looking Forward

No draft legislation to implement the CEWS has yet been released. Further details of the CEWS eligibility may follow once the draft legislation is published.

As additional details are made available, we will send further updates.

If you have any questions about the CEWS, please contact any member of our Employment and Labour Group.