

Covid-19: Benefits and Supports available to Employer's and Employee's in light of the Pandemic

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MANITOBA'S LAW FIRM

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INTRODUCTION

In light of the current COVID-19 pandemic, and with all of the recently introduced benefit programs designed to address these unprecedented times, it can be difficult to stay informed of the latest supports available to Employers and Employees. We at PKF Lawyers recognize this challenge and have compiled a list of benefits and supports, to assist those attempting to navigate through this uncertainty. The following compilation of articles aim to help inform both Employers and Employees of some of the recently introduced and available supports which may be of some assistance during these trying times.

Please note that as we continue to monitor and update this hub of information, the resources available are constantly changing. We at PKF Lawyers are committed to providing the necessary support to all our clients. For more information or to discuss what might be best for you in your specific situation, please do not hesitate to contact us.

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IS YOUR BUSINESS ESSENTIAL?

April 3, 2020

Public Order 67

As the pandemic of COVID-19 continues to evolve within our community The Government of Manitoba has responded by making recommendations, and public orders that have the potential to greatly effect the day-to-day operation of all businesses. On March 20, 2020 Manitoba's government declared a State of Emergency, and on March 30, 2020 the Government of Manitoba, significantly, ordered the temporary closure of all non-essential business commencing on April 1, 2020 at 12:01 a.m. It is critical that business owners take the time to understand the impact of the Public Order 67, and specifically whether their business is deemed essential.

Essential Business

The [schedule](#) begins at page at page 4 of the order and lists 74 essential business that are broken down into 19 categories. The categories are as follows:

1. *Supply Chains* – any business that supplies any of the essential businesses with goods or services necessary for the essential business to operate
2. *Retail and Wholesale*
3. *Accommodations*
4. *Institutional, residential, commercial and industrial maintenance*
5. *Telecommunications and information technology*
6. *Communications industries*
7. *Transportation*
8. *Manufacturing and production*
9. *Agriculture and food production*
10. *Construction*
11. *Finance*
12. *Natural resources*
13. *Environmental services*
14. *Utilities and public works*
15. *Research*
16. *Health care, seniors care and social services*

17. *Justice sector*
18. *Professional services*
19. *Other businesses*

While there are restrictions limiting gatherings of more than 10 people at indoor and outdoor premises, these restrictions would not apply to Essential Businesses, provided those business are continuing to implement physical distancing measures and maintaining high levels of workplace hygiene.

Best practice would be to post notices at all entranceways clearly identifying your business as being an essential service, while also detailing the measures that you are currently implementing at your business in order to maintain safe hygiene and to reduce the spread of the virus to both visitors and staff.

There may be penalties if a business is in violation of the order. If you are uncertain or need help determining if your business falls into one of 74 categories contact PKF Lawyers for an expedient response or call 1-888-234-2232 for government support.

Not Deemed Essential?

If you are now certain that your business is not one of the 74 essential businesses you must arrange for your place of business to be closed from 12:01 a.m. April 1, 2020 to April 14, 2020 at 12:01 a.m. You may however still be able to operate your business, and not be in violation of the order. The order does not prohibit non-essential businesses from:

- a. operating remotely;
- b. attending the place business on a short-term basis to attend to critical matters relating to the closure of the place of business that cannot be dealt with remotely; or
- c. attending the place of business to access goods, materials or supplies necessary for the remote operation of the business.

Businesses will want to ensure that if they are operating “remotely” that they are in fact operating remotely, not merely relocating their business. Violators who abuse the remote operation may be subject to fines and penalties.

As of April 1, 2020, Manitoba’s Chief Provincial Public Health Officer clarified the Order mandating the closure of non-essential businesses. COVID-19 Bulletin #38 states that all businesses that are not exempt from closure may:

- a. continue to operate where customers can order goods online or by telephone; **however, customers cannot attend the businesses' premises or property to order goods;**
- b. continue to sell goods to customers where those goods can be picked up 'curbside' or delivered to customers; **however, customers cannot pick up goods at businesses' premises or on its property;**
- c. allow staff to attend the businesses' premises, without a limitation on the number of staff, as long as staff take measures to keep social distancing of one to two metres apart from each other; and
- d. accept delivery of goods and may allow services, such as construction, repairs, maintenance and cleaning to occur at their premises and on their property.

The complete bulletin may be found here:

<https://news.gov.mb.ca/news/index.html?item=47346&posted=2020-04-01>

As the owner or operator of a business, you must continue to monitor the situation closely. New orders may be made pursuant to *The Public Health Act* and the manner in which provincial authorities interpret such order is subject to change rapidly, as new developments occur.

Implications on your Business - Penalties, Fines and Public Perception

Orders made pursuant to *The Public Health Act* are made to protect all Manitobans and there may be serious consequences for failing to comply. Business owners should be aware that individuals who fail to comply with the current order may face fines of up to \$50,000.00 and imprisonment for up to one year. Corporations that fail to comply may face fines of up to \$500,000.00. Directors or officers of a corporation who authorize or permit their corporations to contravene the order are personally liable to penalties as individuals.

In addition to the legal and financial ramifications of failing to comply with an Order pursuant to *The Public Health Act*, business owners should consider the public perception of any course of action at this time. A perceived breach of legal or ethical obligations may create a public backlash across various media and cause lasting damage to the reputation of business.

If you have been ordered to close your place of business, you have chosen to close, or you are continuing to operate but on a limited basis, business owners must assess a variety of factors immediately. The necessity for their work force, financial obligations, contractual obligations and possible *force majeure* or frustration of a contract, to name a few.

We are all in this together, and if you have any questions or concerns, please do not hesitate to contact PKF Lawyers as we are here to help you and your business triumph through this difficult time.

By: Michael Bellan, Harley Shepherd, and Stéphane Warnock

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AM I STUCK IN MY CONTRACT?

April 1, 2020

Force Majeure

When reviewing your contract, you are first looking for what is referred to as a force majeure clause. The purpose of the contractual tool is to either temporarily or permanently, allow one party out of its contractual obligations. The clause may be triggered by an external, unforeseeable event that is beyond the reasonable control of one party, making a party's contractual obligations commercially unreasonable, impossible, illegal, or a different threshold depending on the exact clause.

External Event

If your contract has a force majeure clause you need to determine if COVID-19 is an external event that falls within the meaning of the clause. You should be looking for language in the clause that clearly describes COVID-19 such as a pandemic, or virus.

Now, not all force majeure clauses will specifically include pandemics. However, it is very common to see "an act of god" in force majeure clauses. It is obvious that COVID-19 falls within the definition of a pandemic or a virus, but is it an act of god? It is difficult to definitively determine how the Courts will deal with this, but the current state of the Canadian jurisprudence, leads us to believe that COVID-19 may be within the meaning of an act of god.

Threshold

If COVID-19 falls within the meaning of a force majeure clause, the degree of difficulty your business is faced by virtue of performing its contractual obligations can now be assessed, I refer to this as the threshold. Some possible thresholds in force majeure clauses include when obligations become impossible, illegal, prevented, hindered, or commercially unreasonable. Each of the aforementioned thresholds, have incredibly different meanings within the law. Take for example, a supply contract, where a supplier is bringing goods that are produced overseas, and the factory that the business owner typically uses is closed as a result of COVID-19. If the threshold in the clause is impossibility, the current jurisprudence states that the business owner relying on the clause should be able to establish that there is no other manufacturer that can produce the goods being supplied under the contract. If this is not the case, it would be possible for that supplier to fulfill its obligations. If the threshold is hindered, or commercially unreasonable the threshold interpretation is entirely different.

Foreseeability

Was, or is COVID-19 foreseeable? I think it is safe to say that if you entered a contract prior to the outbreak of COVID-19, the Court would likely consider the pandemic as an unforeseeable event. However, if you, like many business owners are continuing the operation of your business during the COVID-19 pandemic, you may be entering into new contracts. If you find your business

entering new contracts, even contracts with a force majeure clause, be cautious. It is entirely possible that you may not be able to rely on the force majeure clause in the new contract to relieve you of your contractual obligations as a result of the future circumstances now being foreseeable.

Frustration

If you have now reviewed your written contract and your contract does not have a force majeure clause, or the contract is oral, do not panic, it still may be possible to relieve your business of its contractual obligations. You may be able to rely on the common law doctrine known as frustration. Frustration is similar in theory to a force majeure clause, as it requires that an unforeseeable event results in a contractual obligation(s) being impossible to perform, or dramatically changes the purpose for entering the contract.

Frustration terminates the contractual relationship between the parties. This is dramatically different than a force majeure clause that can temporarily suspend obligations, depending on the language of the clause itself.

In the past frustration has been construed very narrowly by the Court. The Court has generally required that the party seeking to rely on the doctrine demonstrate that the unforeseeable event has made it impossible or illegal to perform its obligation. It is not enough that the obligation has become more difficult.

Conclusion

To reiterate, unfortunately there is no easy answer to “Am I stuck in my contract?”. It is possible that your contractual obligations may be suspended or terminated by virtue of a force majeure clause. The contract may be terminated as a result of frustration. Also, don’t eliminate the possibility of negotiating your way out of certain contractual obligations.

If you have questions or concerns relating to current, or future contractual obligations, and the effect of COVID-19 on your business, please feel free to contact someone from our corporate department and we will be happy to assist you find a solution that works for you and your business.

By: Michael Bellan

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COVID-19 AND WHAT IT MEANS FOR LAY-OFFS, TERMINATIONS AND REFUSALS TO WORK

April 1, 2020

Lay-Offs

What is a Lay-Off:

A lay-off is a temporary break in employment, where after a period of time it is expected that the Employee will likely return to work. Due to the constantly changing circumstances and the uncertainty that lies ahead, it has become impossible to predict the duration of that period.

What the Law was:

It is the Province that regulates all non-federally regulated employment taking place within Manitoba. Under normal circumstances the *Employment Standards Code*, and the *Employment Standards Regulations* set out the interval of time that must elapse before a lay-off is deemed to be a Termination.

Generally, and unless the Employer notified the Employee upon hiring or continued to pay wages or certain benefits after the lay-off, a lay-off will be deemed to be a Termination Without Notice if the Employee is unemployed for a span of 8 weeks within a 16 week period (subject to exceptions specified by the director). That's important, because as soon as the lay-off has been deemed to be Termination, then other statutory rights are triggered, including the Employee's right to be paid in lieu of the Employer failing to provide notice. The Termination Without Notice will be deemed to have taken place on the first day that the Employee was laid-off.

What the Law is now:

When the Province of Manitoba declared a State of Emergency, they also announced that the statutory 8-week lay-off period will not run while we remain in this current State of Emergency. Employees who receive, or who have received, notice of a temporary lay-off, after March 1, 2020, will have their right to be paid in lieu of notice temporarily suspended until after the State of Emergency is over, upon which time the 8 week notice period would then begin to run.

If an Employee has been laid off, they will want to ensure that their Employer has issued a Record of Employment. This will be needed when applying for Employment Insurance benefits.

While no Employer ever wants to issue temporary lay-offs, given the current circumstances temporary lay-offs may be used to help create business stability in these otherwise unstable times. Once all of the uncertainty and this economic downturn has passed, Employer's would then be able to recall an experienced workforce and ideally pick up where they left off. It is recommended that Employer's who are considering this course of action first consult with a lawyer to discuss their specific circumstances.

Termination

While the right to terminate Employees does continue to exist, the impact of COVID-19 could have an affect on a number of employment standards rights, including but not limited to notice periods and payment in lieu of notice. It may be possible to assert that the notice period should be extended given the current economic situation, availability of similar work, and possible contractual obligations. Further, there are a number of government benefits available for Employer's who are considering this option. Every scenario is different, and it is advisable to consult with an employment lawyer before taking these steps, to determine whether termination is the best option in light of the Employer's specific situation.

The Right to Refuse Unsafe Work

According to the *Workplace Safety and Health Act*, workers have a right to refuse work if they reasonably believe that the work would constitutes a danger to their safety or health, or that it might reasonably constitute a danger to the health or safety of another person should they perform the task.

In order for something to be considered a "danger" to health and safety, all of the following conditions would need to be satisfied:

- the hazard is generally unusual to the normal working conditions or tasks, or the health or physical condition of the worker increases the risk;
- the hazard is likely to result in a serious injury or illness; and
- reasonable controls have not been put in place to reduce or eliminate the risk.

Under normal circumstances, the Employee would submit a report to their supervisor detailing why they believe the work to be unsafe. Note that, the Employee would not need to prove that they are actually at risk to begin the work refusal process. If after reviewing the report, the Employer and the Employee cannot agree on a resolution, the Manitoba Workplace Safety and Health ("WSH") can be contacted to determine whether the tasks can

continue. The WSH can be contacted toll free 24 hours a day at 1-855-957-7233.

[What obligations do Employer's have?](#)

First, the Employer will be obligated to continue paying the Employee during the refusal period unless the WSH grants an exemption to the Employer. If the WSH determines that the work is no longer unsafe and can be performed, or if alternate work is made available, the Employer would not be obligated to pay the Employee if the Employee continued to refuse to work.

The Employer also has a general duty to take reasonable precautions to provide a safe work environment. While the current pandemic persists, Employers should take active steps to protect Employees and customers. Employers should understand how the virus spreads, and take preventative measures to reduce the spread, while following the guidelines and [special measures](#) outlined by the Chief Provincial Public Health Officer in response to COVID-19.

Although not technically an obligation, in each of the above cases, best practice would be for the Employer to proceed cautiously. Employers should take proactive steps and reasonable precautions to ensure the health and safety of others. It is also important that Employer's communicate openly with their Employees and keep them apprised of the situation as it changes. Remember, these are uncertain times for everyone, respectful and transparent communication in the workplace can help to alleviate some of the Employee's anxiety and concerns.

For more information or to learn more about the latest on COVID-19 and how it may impact you and your business please contact Stéphane Warnock or any other member of our team. We would be happy to help you navigate these challenges and assist you with any specific concerns you may have during these unprecedented and constantly evolving times.

By: Stéphane Warnock

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UNDERSTANDING EMPLOYMENT INSURANCE BENEFITS AMIDST COVID-19

April 1, 2020

Do I qualify for Employment Insurance Benefits?

Applicants are encouraged to submit applications for benefits so that processing agents may determine eligibility.

You may be entitled to Employment Insurance ("EI") regular benefits if you:

- were employed in insurable employment;
- lost your job through no fault of your own;
- have been without work and without pay for at least seven consecutive days in the last 52 weeks;
- have worked for the required number of insurable employment hours in the last 52 weeks or since the start of your last EI claim, whichever is shorter;
- are ready, willing and capable of working each day; and
- are actively looking for work (you must keep a written record of employers you contact, including when you contacted them).

How many hours do I need to qualify?

The required number of insurable hours does vary depending on where the applicant resides. Manitoba has been divided into three EI districts. Currently, the minimum number of hours worked in the last 52 weeks (or since your last EI claim if you applied for EI within those 52 weeks) would be:

1. For those residing in Winnipeg: Minimum of 700 hours.
2. For those residing in Southern Manitoba: Minimum of 665 hours.
3. For those residing in Northern Manitoba: Minimum of 420 hours.

To put those numbers in perspective, 700 hours means you would have needed to work 17.5 weeks or about 4 months working 40 hours per week during the past year.

How long can I receive regular EI Benefits?

Once again, this will depend on what region the applicant resides in, and ranges anywhere from a minimum of 14 weeks up to a maximum of 45 weeks.

The minimum number of weeks that eligible recipients will receive EI is as follows:

1. If you live in Winnipeg: you will receive EI for a minimum of 14 weeks.

2. If you live in Southern Manitoba: you will receive EI for a minimum of 15 weeks
3. If you live In Northern Manitoba: you will receive EI for a minimum of 32 weeks

Eligible EI recipients will continue to receive EI payments until the earlier of:

- All the weeks of entitled benefits have been received;
- The payment timeframe to which benefits can be received ends;
- The recipient stops filing bi-weekly reports; or
- A request is submitted to terminate the claim or to file a new claim.

Anyone receiving EI benefits is obligated to notify Service Canada if they start working before their claim has come to an end.

How do I apply?

The simplest way is to submit an application online:

Go to the Government of Canada website and search for [Employment Insurance Regular Benefits](#)

Typically, the Record of Employment ("ROE") will be submitted electronically by the employer. While an employer who submits the ROE is not under an obligation to provide same to the employee, the employee will want to confirm that the ROE has been submitted.

How long does it take to process?

Eligible applicants should receive benefits within 28 days of receiving all the required documents. Delays on the employer's part in submitting the ROE can result in the employees benefits also being delayed. However, Service Canada will accept applications that are submitted before the ROE has been received. Therefore, all applicants can, and should, submit their applications as soon as possible.

If for whatever reason you are not eligible to receive EI you will be notified either by phone or letter. Applicants who do not qualify for EI should refer to my article on the Canada Emergency Response Benefit, to determine whether other temporary support benefits may be available.

Bi-Weekly Reports

Persons receiving EI will be required to submit reports every 2 weeks. These reports can be submitted through the governments "Internet Reporting

Service". In some circumstances it may be the Employer who submits these reports. Failure to submit bi-weekly reports could result in a loss of benefits.

[Can I get paid while receiving EI?](#)

Those intending to work while receiving regular EI benefits will be able to keep 50 cents of EI benefits for every dollar earned up to 90 percent of the weekly insurable earnings used to calculate the EI benefit amount. Once a person begins to earn more than 90% of their former weekly wage, their EI benefits will be reduced dollar for dollar the amount in excess of 90%.

[What about other benefits?](#)

[The EI Family Supplement](#)

For those who:

- (a) Currently have children under the age of 18;
- (b) Are receiving the Canada Child Benefit; and
- (c) Have a net family income that's less than \$25,921

You may be eligible for the EI Family Supplement. The supplement rate is based on a combination of the net family income and the number of children (and their ages).

Only one spouse can apply for these benefits (typically the spouse with the lower benefit rate). This is only available to those who have a family income under \$25,921.

For those families with a yearly net family income less than \$25,921, with children

[Canada Child Benefit](#)

For those who are already receiving the Canada Child Benefit, you will now receive an additional \$300 per child when the May CCB payment is issued. There is no need to apply, this will automatically be adjusted to those who are already receiving this benefit.

[EI Sickness Benefits](#)

Available to anyone who is sick, quarantined, or self-isolating. No medical certificate would be required for these benefits, in fact when Bill C-13 was passed on March 25, 2020, it effectively eliminated every reference to provisions within the *Employment Insurance Act* that would have otherwise required such a medical certificate. Generally, the applicant will have needed to have worked at least 600 hours over the past 52 weeks. The normal one-

week waiting period will be waived for those applicants who are self-isolating or quarantined.

These benefits would extend for a period of 15 weeks. Successful applicants would receive 55% of their former weekly earnings up to a maximum of \$573/week. Further information on these benefits can be found by contacting the toll-free number 1-833-381-2725.

It is important to remember that the programs and benefits that are currently in place are not stagnant. As governing bodies continue to respond to the influx of uncertainty it can be difficult to monitor and keep track of all the latest developments. We at PKF are committed to staying up to speed on this unprecedented situation, so you don't have to. For more information on how COVID-19 may impact you or your business, please contact Stéphane Warnock or any other member of our team. We would be happy to help you navigate these challenges and assist you with any specific concerns you may have during this time of global uncertainty.

By: Stéphane Warnock

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COVID 19 – AM I INSURED*?

April 1, 2020

Understanding Business Interruption Insurance

With businesses being forced to close many of our clients are asking if their business losses will be covered by their Business Interruption Insurance. The following will hopefully provide you and your business with the information you need to help answer this question.

Business Interruption Insurance typically covers the loss of income a business suffers following a direct physical loss or damage to your business property. Meaning, typically this provides coverage for your loss of earnings (or in some policies profits) that occur when your business is shut down or physically damaged by an insured peril – like a fire or a flood. This coverage is provided for the time it takes to reconstruct, repair, or relocate your place of business. Other operating expenses like the cost to move to a temporary location, payroll, taxes and loan payments may also be covered.

What does this mean in the present circumstances?

Currently, in Manitoba and across Canada many businesses are closed due to COVID-19 and therefore suffering loss of earnings and profit, while still incurring expenses.

While a typical Business Interruption Insurance policy would cover losses for physical damage to your place of business, COVID-19 is not *physically damaging* your place business, so it is unlikely that you would be covered under a standard business interruption policy for your lost earnings or profits due to a COVID-19 closure.

Are there other coverages?

“Pandemic” coverage does exist. This is typically a special coverage for the loss of earnings or profit due to a pandemic or infectious disease. This special coverage can be an additional endorsement on a business interruption policy or a separate coverage.

Not all insurance companies offer this special coverage. Intact, one of Canada’s largest insurers, does not offer this special coverage, whereas Aviva and AON do have policies that include this special coverage.

I have “Pandemic” coverage, but can I use it?

If your policy includes this special “pandemic” coverage for losses due to business closure – the next question is when it is triggered? Typically, this type of coverage is triggered when a business is forced to close - like by order

of the government. Businesses that close voluntarily may not be covered under these special policies.

What about a Mandatory Closure?

There is another type of insurance coverage that may provide coverage for your business and income losses when your business is interrupted by a government or "Civil Authority".

Civil Authority Insurance typically provides coverage for business losses due to a government closure of a business or when a government prohibits access to a business. However, some civil authority coverages are only triggered by a physical catastrophic event, like hurricane or wildfire. Further, coverage could be limited to a specific length of time (typically 15 and 30 days).

What should you do?

It is important that you review your insurance to determine what coverage you have for your business. You may consider calling your broker to discuss your coverage, as your broker should have a copy of your policy and will be able to explain how your coverage may apply. If you have, or may have insurance coverage, remember to seriously consider and calculate your losses and discuss the costs of submitting a claim with your broker, as there will likely be a deductible and a claim may affect your insurance rates in the future.

You will also want to consider how your insurance may affect any government benefit program. In previous disaster relief programs, the government has provided benefits to people and businesses without insurance. Meaning, that a person or business with insurance would not qualify for the government benefit. If the government places similar restrictions on a COVID 19 benefit, then it will be crucially important for you to understand what coverage you have.

**All coverage is to be determined by each individual insurance policy. Nothing in this memorandum is meant to constitute legal advice and is for informational purposes only.*

By: Christina J. Cook

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THE CANADA EMERGENCY RESPONSE BENEFIT (“CERB”)

****This benefit replaced both the Emergency Care Benefit and the Emergency Support Benefit****

April 2, 2020

What is it?

On March 25, 2020 the Canada Emergency Response Act was enacted, and with it came these Canada Emergency Response Benefits which provide temporary income support in response to COVID-19. Designed to be a simple and accessible benefits program, these benefits can be applied for through Service Canada or the Canada Revenue Agency. This temporary income support provides broad coverage to assist workers who have been affected, directly or indirectly, by COVID-19 regardless of their eligibility for Employment Insurance.

How much can I get?

With the application process scheduled to open April 6, 2020, the CERB is a taxable benefit of \$2,000 a month for up to 4 months, available from March 15, 2020 until October 3, 2020, with payments being received every 4 weeks.. As it currently stands, recipients will always receive the fixed sum of \$500 per week, regardless of what they may have otherwise been eligible to receive through Employment Insurance. (Compare this to Employment Insurance (“EI”) benefits where you would receive 55% of your normal weekly earnings up to a maximum of \$573/week.)

How do I apply?

Applications for the CERB opened [today](#), April 6, 2020, for those who were born in January, February, or March. Those born in April, May, or June should apply on April 7, 2020; those born in July, August, or September should apply on April 8, 2020; and those born in October, November, or December should apply on April 9, 2020. Following this 4 day period, anyone born in any month may apply. For those who sign up for direct deposit, the funds should be available within 3 days of submitting your application, with payments being applied retroactively to your eligibility date up to and including March 15, 2020.

Who can apply for this?

If you are 15 years of age or older, residing in Canada, and you have earned at least \$5,000 in income within the last 12 months either through employment income or self-employment income, and you have had to stop working for a period of at least 14 consecutive days within a one month period because of COVID-19, you would be eligible for these support payments.

This would include:

- workers who must stop working due to COVID-19 and do not have access to paid leave or other income support;
- workers who are sick, in self-isolation, quarantined or are taking care of someone who is sick with COVID-19 (no medical documentation would be required);
- 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;
- workers who 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; and
- wage earners and self-employed individuals, including contract workers, who would not otherwise be eligible for Employment Insurance.

One notable exception would be workers who voluntarily quit their jobs. A worker who quit their employment voluntarily would likely be excluded from receiving these benefits.

[What if I have already applied for, or would like to apply for Employment Insurance?](#)

CERB is available to individuals, whether they are eligible for EI benefits or not. Any person currently receiving EI benefits would not be eligible for CERB unless that person's EI benefits have come to an end (before October 2, 2020) and they continue to experience loss of income due to COVID-19. In the alternative, if a person has exhausted the 16-week period for CERB, they may be eligible to apply for EI benefits if they continue to experience loss of income.

[Can my Employer top up my income if I'm receiving CERB?](#)

Currently, the answer is no. However, it is important to remember that the programs and benefits that are currently in place are not stagnant and are constantly changing.

As governing bodies continue to respond to the influx of uncertainty it can be difficult to monitor and keep track of all the latest developments. We at PKF are committed to staying up to speed on this unprecedented situation, so you don't have to. For more information on how COVID-19 may impact you or your business, please contact Stéphane Warnock or any other member of our team. We would be happy to help you navigate these challenges and assist you with any specific concerns you may have during this time of global uncertainty.

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WORK SHARING PROGRAM

April 3, 2020

What is it?

The Work-Sharing Program is an adjustment program that assists Employers and Employees to avoid layoffs when there is a temporary reduction in business activity due to circumstances beyond the Employer's control. The program supports Employees, who are eligible for EI benefits, while the Employer recovers.

Sharing the work

The Work-Sharing Program requires that all workers in each class be treated equally. Employers should be cautious about including senior or high-level employees, because it is expected that the workload is going to be shared equally amongst all the members of the sharing unit.

It is however possible to separate the units.

E.g. all the machine workers could form part of a group that shares their work equally, while all the salespersons form another group that shares their work equally amongst themselves.

Eligibility

Employers Requirements

To be eligible for the Work-Sharing program, an Employer would need to demonstrate all of the following:

- be in business in Canada year-round for at least 2 years;
- be a private business, a publicly held company, or a not-for profit organization
 - a not for profit would need to demonstrate that the shortage of work is directly associated with a reduction in the organizations normal level of Business Activity;
- be able to demonstrate that the shortage of work is beyond the Employer's control and not a regular and/or cyclical phenomenon;
- be able to provide documentation that demonstrates a reduction in regular business activity by at least 10%; and
- submit and implement a recovery plan detailing how each Work-Sharing unit will operate, the reduced hours, and the reasonable expectation that the business will return to normal working hours upon completion of the program.

Employee Requirements:

- Employees must be eligible to receive Employment Insurance benefits, and be either full-time employees, or be part-time employees who are required to fulfil everyday functions of normal business activity.
- The Employee would also need to agree to the Work-Sharing program, and the reduction in hours.
- At least 2 employees must work for the Employer before a Work-Sharing Agreement can be formed.

Duration

Work Sharing agreements must have a minimum duration of 6 weeks, the maximum duration has recently been extended from 38 weeks to up to 76 weeks.

Workload Must be Reduced

You can't apply for the Work-Sharing program without cutting the employees hours. The Employees workload must be reduced between 10%-60%. Meaning, the Employee must be working between one half day, to up to 3 days less than they would otherwise have been working during a normal work week.

Further, and as mentioned above, everyone in the class of workers participating in the Work Share program must be treated equally in terms of the percentage of time that they have off.

Employee Benefits

For the duration of the Work-Sharing agreement the Employer is required to maintain all existing Employee benefits, including but not limited to, health insurance, dental coverage, pension benefits, vacation, group disability... However, Employees should be informed that these benefits may be reduced if they are calculated based on their weekly earnings. Additionally, statutory holidays will not be compensated by Employment Insurance benefits if occurring during the Work-Sharing agreement period.

Application

Applications for the Work-Sharing program should be submitted to the Service Canada Program Officer, who will conduct a cost analysis before recommending the program for approval.

The PDF and recovery plan template must be completed and submitted by the Employer on the forms as set out on the [government of Canada website](#).

Other Considerations:

For the duration of the Work-Sharing Agreement, the Employer may not hire new staff, but may replace Employees participating in the Work-Sharing agreement if they choose to leave.

If the Employer has staff that are NOT participating in the Work-Sharing, those departments not participating may increase staff as required.

Training

The salary costs of Employees taking part in Training activities during the course of the Work Sharing must be paid entirely by the Employer. Any employees not scheduled to work would have the option of attending.

Taxation

EI Benefits received through the Work-Sharing agreement are taxable. However, these are not always withheld at the source, employees receiving these benefits may wish to have their income tax deductions increased in order to avoid paying taxes owing at year end.

Bi-weekly Report Cards

Employees can opt-out of the bi-weekly reports that would otherwise be required in order to receive EI Benefits, if they agree to allow their Employer to report their hours worked on the Employee's behalf.

Employer Obligations During the Agreement:

Employer's participating in the Work-Sharing program must satisfy all of the obligations listed below:

- provide information to all employees and to each member of the Work-Sharing Unit;
- record and report the total number of hours worked and missed as a result of the Work-Sharing program by way of a [Utilization Report](#) (all Employees must work a minimum of one half-hour per week);
- maintain existing benefits, subject to those which may be reduced if calculated based on weekly earnings;
- inform Employees who may be affected by the reduced benefits the extent to which those benefits have been temporarily reduced;
- maintain records of wages/hours and overtime worked for all Employees participating in the Work-Sharing program and provide same to Service Canada upon request;
- report the progress of the recovery plan; and
- notify the Service Canada prior to any changes to the agreement.

Changing the Work-Share Agreement:

Any agreement extensions, layoffs, additions, deletions and substitutions to the Work-sharing units, or shutdowns would require the approval of Service Canada. The form to make changes is available on the [Government of Canada website](#).

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TEMPORARY WAGE SUBSIDY FOR EMPLOYERS

April 3, 2020

The federal government announced on April 1st that the temporary wage subsidy would be increased to 75% and would be available for all businesses suffering at least a 30% loss in revenues due to COVID-19. This is a significant increase from the previously announced 10% subsidy.

Eligible Employers:

All businesses except for public sector entities, who have experienced a 30% loss in revenues due to COVID-19. For greater clarity, size and/or the number of employees you have, has nothing to do with eligibility.

How much could an Employer receive:

The Employer must calculate the subsidy themselves by:

1. first calculating the total remuneration spent on Employee wages for the period of March 18, 2020 to June 19,2020
2. 75% of that number represents the eligible subsidy *{this number would be capped at the lesser of \$847 X (the # of eligible employees) per week; or \$58,700}*

What do I need to keep a record of:

- (1) the total remuneration paid from March 18, 2020 to June 19, 2020;
- (2) the federal, provincial, or territorial income tax that was deducted from that remuneration; and
- (3) the number of eligible employees paid in that period.

How do I apply?

Either deduct the Subsidy that you calculated above from federal, provincial or territorial income tax, and subtract that amount from your payroll remittances during that period;

OR

If you fail to deduct the subsidy from provincial, or federal taxes during said period, you can deduct your payroll at the end of the year, as long as you have a record of the above.

Other FAQs:

Is the subsidy considered taxable income?

- a. Yes. You will have to report this as income in the year that the subsidy is received.

What if my business is closed during the period of March 18, 2020 to June 19, 2020?

- a. This subsidy is only available to Eligible Employers who are paying Employees during said period. You would not be able to receive the subsidy.

What if I decide to only pay my employees 75% of their wage and rely on this subsidy?

- a. This Temporary Wage Subsidy represents 75% of the wages that were actually paid to the Employees during the 3-month period. Meaning, if an Employer decides to reduce the wages paid to Employees during the 3-month period, the subsidy would only amount to 75% of that which was paid. A record of same would need to be provided.

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BUSINESS CREDIT AVAILABILITY PROGRAM (BCAP)

April 2, 2020

Export Development Canada and the Business Development Bank of Canada will provide more than \$65 Billion in direct lending and financial support to businesses with viable business models whose access to financing would otherwise be restricted.

Within this program includes:

- (1) The Canada Emergency Business Account
- (2) The Loan Guarantee for Small and Medium-Sized Enterprises
- (3) Co-Lending Program for Small and Medium-Sized Enterprises

What is the Canada Emergency Business Account?

By now you have probably heard about the Canada Emergency Business Account. Introduced on March 27, 2020, this is a business support available to small businesses and not-for-profits capable of demonstrating that they paid between \$50,000-\$1,000,000 in total payroll in the year 2019. Eligible organizations will be able to receive interest free loans of up to \$40,000 to support their business in dealing with the impact of COVID-19. Provided that 75% of the loan can be fully repaid by December 31, 2022 the remaining 25% (up to \$10,000) will be forgiven. If the loan is not fully repaid by December 31, 2022 an interest may apply during the extension period.

How do I access these additional funds:

Employers will want to talk to the banks they're currently using and ask them about these potential options.

Alternatively these contacts can be contacted directly at:

[Business Development Bank of Canada](#)
1-877-232-2269

[Export Development Canada](#)
1-800-229-0575

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CHILD CARE FOR THOSE IN ESSENTIAL SERVICES:

April 3, 2020

For those people with children who require child-care and who are employed in any of the critical services as defined by the chief provincial public health officer. Including, but not limited to:

- Emergency Service Providers - Healthcare
- Corrections Workers
- Law Enforcement
- Fire and Paramedic
- Direct Social Services and Child Protection Workers
- Grocery store staff
- Farmers
- Construction workers
- Bank employees

If alternate care arrangements cannot be made and child-care is required, fill in and submit the [Essential Services Worker Child Care Request Form](#), which is an action taken specifically by the Manitoba government to assist those emergency service workers in need of child-care providers.

Depending on the size of the space and whether there are external entrances to segregated rooms, the licenced child-care centres will be limited to a maximum of no more than 16 children per room, based on the advice of the chief provincial public health officer.

As of April 14, these measures are currently in place to assist all parents who work in critical services, to ensure that they will be able to access licenced child-care facilities. For those who are currently operating a child-care facility, and who have been affected by COVID-19, the provincial government has announced that it will be providing grants and support to those who qualify. For more information, or for those child-care facilities looking to re-open, you are encouraged to email cdinfo@gov.mb.ca

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