



# TAX NOTES

April 3, 2020

## CANADA EMERGENCY RESPONSE BENEFIT

### I. INTRODUCTION

On March 24, 2020, Parliament enacted the *Canada Emergency Response Benefit Act*. The new Canada Emergency Response Benefit (CERB) offers income support for up to 16 weeks for workers who lose pay because of the pandemic. CERB is intended to assist workers who cannot access employment insurance (EI) benefits.

### II. CERB BENEFITS

CERB provides a taxable benefit of \$500 per week for up to sixteen weeks, although the Minister of Employment and Social Development and the Minister of Finance may, by regulation, alter the amount of the benefit or the maximum number of weeks for which benefits are available. The Minister of Employment and Social Development may also, by regulation, create different classes of workers that will have different entitlements to CERB benefits.

In keeping with Parliament's intention that CERB benefits be widely available, the conditions for an individual to be entitled to CERB benefits are reasonably straightforward:

1. The CERB applicant must be a "worker", meaning that the individual must be at least 15 years old, be resident in Canada and have had income in either 2019 or the 12-month period preceding a CERB claim of at least \$5,000 from employment, self-employment, parental EI benefits or provincial parental allowances.
2. The worker must have ceased involuntarily his or her employment or self-employment for at least 14 consecutive days in a four-week period in respect of which CERB is claimed for reasons related to COVID-19.
3. The worker must not otherwise be receiving employment or self-employment income, EI benefits or provincial parental or pregnancy allowances.

The Department of Finance has indicated that an expansive approach will be taken in determining whether employment has ceased for reasons relating to COVID-19. Workers would qualify not only if their employer has ceased operations because of COVID-19, but also, for example, if the workers cannot go to work because no childcare is available due to COVID-19.

All of these conditions are somewhat flexible, as the Minister of Employment and Social Development has the power to promulgate regulations to, among other things: (i) change the \$5,000 income threshold to qualify as a worker; (ii) permit income from employment or self-employment to be earned during the 14-day layoff period; or (iii) prescribe income from other sources that would render a worker ineligible for CERB if earned during the layoff period. It is possible that regulations of this nature will be promulgated as the crisis and need for CERB evolves.

### **III. APPLYING FOR CERB**

Eligible workers must apply for CERB for a four-week period between March 15, 2020 and October 3, 2020 and must reapply for successive four-week periods if they continue to be entitled to CERB benefits in those later periods. No CERB applications may be made after December 2, 2020. These dates cannot be extended by regulation, so Parliamentary approval will be required if CERB continues to be necessary after October 3, 2020. Applications for CERB will open April 6, 2020.

An application for CERB may be made online through CRA MyAccount, or by telephone. We understand that the CERB telephone line has been designed to withstand very high call volumes, so workers without access to MyAccount should still be able to have their applications processed. Workers can prepare to apply for CERB by signing up for MyAccount or My Service Canada Account and making sure the CRA has up-to-date direct deposit and mailing information.

Because the objective of CERB is to quickly provide money to households, it is anticipated that minimal screening will be undertaken to identify whether individuals are in fact eligible for CERB benefits for which they have applied. Instead, verification will occur after benefits are paid. If it is subsequently determined that a worker received benefits to which the individual was not entitled, that amount must be repaid as soon as is feasible. No interest will accrue on amounts that must be repaid.

Consistent with the legislative purpose, CERB benefits cannot be seized by creditors and will not be part of the estate of a bankrupt or insolvent individual.

Individuals who are already receiving EI benefits and sickness benefits will continue to receive those benefits. If their EI benefits expire prior to October 3, 2020, they could apply for CERB once their EI benefits cease if they are otherwise eligible for CERB. Applications for EI after March 15, 2020 have been automatically converted into CERB applications, and eligible claimants should receive EI benefits after the 16 weeks of CERB benefits expire.

### **IV. DISCUSSION**

CERB is deliberately more expansive than traditional EI benefits. The relaxed eligibility requirements for CERB provide an opportunity for employees and their employers to potentially use a two-week on, two-week off work cycle as a means of keeping as many employees as possible working to some extent. CERB's flexibility also permits families to adopt similar practices

to accommodate childcare or eldercare needs; for example, spouses may alternate weeks that they work and weeks that they stay home to care for children so that both spouses remain employed while both also qualify for CERB.

CERB and the Canadian Emergency Wage Subsidy (CEWS, discussed in our [previous Tax Note](#)) are effectively mutually exclusive. If an employer is receiving CEWS in respect of an employee for a particular week because the employer is continuing to pay wages to the employee during that week, the employee will have employment income and will be ineligible for CERB. CEWS provides for larger payments to employees than CERB, so employers who have adequate cash flow can provide more government-funded income to employees earning over \$667 per week by keeping them on payroll rather than laying them off.

The legislation enacting CERB is very flexible and deliberately grants considerable latitude to the Minister of Finance and Employment and Social Development to amend the program through regulation. If shortcomings in the CERB program are identified, those shortcomings should be brought to the attention of the Department of Finance and to Members of Parliament; it is reasonable to expect that serious deficiencies not requiring legislative action will be remedied.

The COVID-19 pandemic continues to evolve, as are its economic implications. We are continuing to monitor administrative pronouncements, draft legislation and proposed regulations as they become available. Any Felesky Flynn LLP lawyer would be pleased to discuss CERB, CEWS or any other COVID-19 relief program with you or your clients at your convenience.