



# TaxNewsFlash Canada

## Employers — Managing Tax & Legal Issues During COVID-19

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Employers should ensure they take appropriate steps to manage their employee issues during the COVID-19 outbreak. During this time, employers may want to look at their options to avoid laying off employees, including considering several government programs that are in place to assist employers in this situation. In particular, the government recently announced that it would enhance some programs to assist businesses. However, in situations where employers decide to initiate temporary lay-offs, they should consider important related legal issues related to payroll and employment law. Employers who may need assistance navigating their options and requirements at this time should reach out to our team of tax and legal professionals.

### **Background**

Canada has responded to COVID-19 by announcing, among other changes and fiscal measures, enhancements to Employment Insurance (EI), a temporary wage subsidy and an Emergency Care Benefit to offer financial support to affected businesses and individuals. For details, see *TaxNewsFlash-Canada* 2020-16, "[Employers — Prepare Your COVID-19 Contingency Plan](#)".

### **Work-Sharing program**

Employers who are directly or indirectly affected by a downturn in business caused by COVID-19 may want to consider whether they qualify for the federal Work-Sharing program. This program, which provides EI benefits for eligible employees as income support is designed to help eligible employers avoid layoffs during certain temporary

reductions in business activity, such as the COVID-19 outbreak. To qualify, employers must generally:

- Have been in business in Canada year-round for at least two years
- Be a private business, publicly-held company or a not-for-profit organization
- Demonstrate that the shortage of work is temporary and beyond their control
- Demonstrate a recent decrease in business activity of approximately 10%
- Submit and implement a recovery plan designed to return the Work-Sharing individuals to normal working hours by the end of the program.

The program allows employers to reduce an employee's work schedule as follows:

- The program must last between six weeks and 76 weeks (the duration of the program was recently increased from a maximum of 38 weeks as a result of COVID-19).
- A reduction between a minimum of 10% (one half day) and a maximum of 60% (three days).
- In any given week, the work reduction can vary depending on available work, as long as the work reduction on average is between 10%-60% for the duration of the program.

To approve a Work-Share application, a Service Canada Program Officer must conclude on the following: the application meets the program requirements, the Work-Sharing is appropriate to address the work reduction, and that there is a reasonable expectation (based on the employer's plan) that all members of any Work-Sharing units will return to normal working hours by the end of the agreement.

### **Supplemental unemployment benefits**

Employers may also take action to top up an employee's EI Sickness Benefits. Specifically, employers may establish a Supplementary Unemployment Benefit (SUB) plan for this purpose during a period of unemployment due to a temporary layoff for, among other things, sickness. Employers considering this plan should register a qualifying SUB plan with Service Canada, or else the benefit will be treated as income, and any EI benefits received may be reduced.

The registration date of the SUB plan is the date on which it is submitted to Service Canada's SUB plan, if all the required conditions are met and the employer submits all supporting documents. The plan will be registered under the employer's business number for payroll deductions and a notification of the approval will be sent to the employer. Until a

plan is registered, any amounts paid will be treated as earnings and may be deducted from the employee's EI benefits.

In order to benefit from this program, employers should take the following basic steps:

- Register for a SUB plan with Service Canada
- Identify the employee groups that will be subject to lay off
- Complete the Record of Employment (ROE) for individual employees and file this record online with Service Canada
- Have employees apply for EI through Service Canada
- Pay the 40% differential to employees (once the SUB is approved), which is considered to come from the SUB plan and will not negatively impact employees' eligibility for full EI
- Pay employees the top-up payment of 40% while they continue to receive EI, once the SUB plan is registered

Once the health emergency is over and employees come off EI and return to regular pay, employers should stop using the SUB plan.

#### **KPMG observations**

Employers considering registering a SUB plan should be aware that it takes approximately two weeks to have a SUB plan registered. To help alleviate an employee's cash flow concerns an employer may decide to provide the employee with a loan in the interim, in certain situations.

Depending on how long the SUB plan is used, employers may want to perform a check of employee source withholdings for projected pay for the year to ensure that the withholdings rate is appropriate for the second half of the year. This can help ensure sufficient withholdings are made, so that employees are not left with a large personal tax liability when they file their 2020 personal tax return.

#### **Temporary wage subsidy for small businesses**

The government recently proposed a new temporary wage subsidy to support eligible small employers that are facing revenue losses and to help prevent lay-offs. This subsidy, which applies for a period of three months, will be equal to 10% of remuneration paid during that period, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer. Businesses will be able to benefit immediately from this support by reducing their remittances of income tax withheld on their employees' remuneration. In addition to

corporations eligible for the small business deduction, non-profit organizations and charities will also be eligible for this subsidy.

### Temporary layoffs — Employer obligations

Employers may choose at this time to temporarily lay off employees and cease compensation, where allowed under the relevant law. In this case, the employer and employee treat the employment relationship as ongoing, despite this interruption of the employee's work term, with the understanding the employee may resume working, in an equivalent position and on the same terms, in the future. Employers considering this course of action should remember that the rules in this area can vary significantly by province, including what constitutes a temporary layoff, how long such layoffs can last, and whether employers must provide advance notice. A member of KPMG Law can assist with your particular circumstances.

Generally, layoff periods are unpaid, unless otherwise provided under an employment agreement, company policy or collective agreement. However, employees may qualify for Employment Insurance under new eligibility criteria put in place by the federal government for COVID-19. However, employees may volunteer to use vacation time they are entitled to during a temporary layoff period and continue to receive pay. In addition, most employers are not legally required to continue benefit contributions during temporary layoffs, subject to certain provincial requirements. Employers should seek legal advice to determine the obligations they must comply with for their own particular situation.

Another important consideration in this area is that many provinces have different legal requirements that apply to group/mass termination. In some cases, these rules can also apply to temporary layoffs.

#### **KPMG observations**

It's important to note that the federal government has not announced any specific changes relating to EI for independent contractors. However, the government did introduce the Emergency Care Benefit and a new Emergency Support Benefit for certain individuals who are not eligible for EI. For details, see *TaxNewsFlash-Canada* 2020-14, "[COVID-19 — Tax Deadline Delay and More Relief Announced](#)".

In addition, it's not yet clear whether the federal government and the provinces may consider additional changes to amend the employment law to provide relief during the COVID-19 epidemic. For example, Ontario recently enacted legislation that requires employers to provide job-protected leave for employees who are in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children because of school or day care closures or to care for other relatives. This legislation also relieves the requirement for employees to provide sick notes.

**We can help**

Your KPMG adviser can help you assess how COVID-19 may affect your tax obligations. We can also keep you abreast of any tax-related changes related to COVID-19 that you'll need to consider in the days and weeks ahead. For guidance on any of these employer considerations, contact a member of our team for assistance.

**Stay connected on the latest COVID-19 developments**

We continue to watch tax and legal issues related to the evolving COVID-19 situation and will provide further information as it becomes available. For the latest developments, see our dedicated COVID-19 site, [The Business Implications of Coronavirus](#).

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