SALOPEK & ASSOCIATES
STRATEGIC PLANNING · HUMAN RESOURCES · BOARD GOVERNANCE
we understand your people & your business

# "COVID-19 & The Workplace" Webinar FAQ's

Updated June 8, 2020

## Q: With regard to the 10% Temporary Wage Subsidy program for businesses, once this is received how can employers use those funds? Are they required to give it to employees who had reduced income?

**A:** The 10% wage subsidy program does not offer funds back to businesses, instead it is a program which allows employers to reduce the amount of their payroll remittance of federal, provincial, or territorial income tax that they send to the CRA by the amount of the subsidy. The subsidy is calculated when employers remit their income tax, CPP, EI deductions to CRA. Once employers have calculated this subsidy (see example below) employers can reduce employees' current payroll remittance. Employers can use the savings for any purposes.

For example, an employer pays 5 eligible employee's monthly salaries of $4,100 for a total monthly payroll of $20,500. The employers wage subsidy for the month will be 10% of $20,500, or $2,050. For the three-month period, if the employer's payroll information remains the same in each month, employers will pay $61,500 of remuneration. Therefore, 10% of the remuneration employers pay in the three-month period is $6,150.

Since this amount is below the maximum allowable amount of $6,875 ($1,375 x 5 employees), employers' total wage subsidy for the three-month period will be **$6,150.**

When employers remit their payroll remittance of federal/provincial/territorial income tax to CRA they can reduce the amount by $6,150. If employers don't do this, at the end of the year, CRA will pay the amount to them or transfer it to the employer's next year's remittance.

Please visit the following link for more information - https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-wage-subsidy-small-businesses.html

## Q: For the CERB, is it only for the 16 weeks so that would end in June as it started in March?

**A:** Yes, the CERB benefit is only payable for a total of 16-weeks; however, these weeks do not have to be consecutive. It would depend on when an employee qualified and received the benefit as the maximum amount payable is 16-weeks total and it can be broken up and paid over several periods depending on whether the employee has been recalled to work. Additionally, CERB benefits may continue if you don't expect to earn over $1,000 in employment or self-employment income for at least 14 days in a row during an eligible 4-week CERB period. The CERB program is scheduled to expire in early October 3, 2020.

## Q: Are there any programs to help employees who have day care issues and can only work on a part time basis?

A: There is no specific program to help part-time employees with day care issues other than the CERB which can be payable if an employees work has been interrupted directly by COVID-19, and their income has fallen below $1,000 (before taxes) for at least 14 days in a row.

## Q: What happens if employers don't have enough work after the temporary layoff ends (120 days) or they have problems retaining employees due to lack of finances? Do we have to get a lawyer to draft a plan or will it cause more problems for us?

**A:** If employers don't have enough work available then the temporary layoff may become a permanent layoff/termination in which case severance payments would be due. In order to calculate the appropriate amount of severance due, it is recommended employers contact an employment lawyer or experienced HR Consultant.

If employers' financial situation is temporary, it is possible to either extend the temporary layoff by paying either wages, benefits, pensions or RRSP's with the employee's agreement, or to bring back employees in a part-time capacity again if they are in agreement. In this case, employers may want to consider applying for the "Work Sharing" program for their business. Employees would receive top-up through EI benefits under this program.

There are several other programs available to help business who are struggling to stay open due to finances including the 10% Temporary Wage subsidy (Note - if you are an eligible employer, but choose not to reduce your payroll remittances during the year, you can still calculate the 10% Temporary Wage Subsidy for employers on remuneration paid from March 18, 2020 to June 19, 2020) or the CEWS program which provides up to 75% of wages for 12 weeks until August 29, 2020.

In order to maintain the employment relationship, an employer may recall employees, even if they are not required to work given there is not enough work. If the employer is eligible for the CEWS, they can use the wage subsidy to pay up to 75% of the employee's salary and attempt to top up the employee's salary to pre-COVID levels through their own means.

## Q: For the 75% wage subsidy (CEWS Program), how can businesses use that money? Is it mandatory for the business to use that money for its employees?

A: Employers can use these funds in any way they like; however, the intention of the subsidy is to help businesses keep employees on the payroll, to avoid layoffs and dismissals, or to encourage employers to recall employees they have laid off. Eligible employees do not have to actually be working (this is called being "furloughed"). The only requirement is that they are getting paid.

SALOPEK & ASSOCIATES
STRATEGIC PLANNING · HUMAN RESOURCES · BOARD GOVERNANCE
we understand your people & your business

## Q: What are the changes to Alberta Employment Legislation with regard to the 24 hours-notice for change of hours?

A: Legislation has changed with regards to notice of shift changes not for change of hours. If employers are having to change an employee's shift (start and end time), employers are no longer required by law to provide the 24-hours' notice. However, employers would still need to provide the employee as much notice as reasonable and possible in the circumstances.

Also, the requirement for 2 weeks' notice for changes to work schedules for those under an averaging agreement (employee averages work hours over a period of time) has been removed.

Please visit the following link for more information: https://www.alberta.ca/temporary-workplace-rule-changes.aspx

## Q: Our clinic policies and procedures are in place; all staff are aware and we do daily team huddles reviewing the most updated CMO updates, advice and training with COVID-19. However, we don't yet have a completed formal SOP on paper. Is this a problem?

A: In terms of mitigating an employer's risk and potential liability it is recommended employers have written policies and procedures that all staff are made aware of. If there was an issue in the future, employers can reference the policy and show that they made the efforts to have their employees understand and sign off on the policies. Having documented policies also ensures there is consistency in how issues are dealt with. Recommended policies would be a "Sick Leave Policy", "COVID-19 or Pandemic Response Policy" and/or an "Infection and Prevention Control Policy" along with a "Health Assessment and Consent Form".

## Q: Can an employee refuse to go back to work even if the employer has followed all the recommendations, mostly because of fear or being pregnant or feeling like it's too early to go back to work?

**A:** Although employees have the ability to refuse unsafe work, it has to be based on a reasonable assessment of the risk. The employer has a duty to look into it and ensure the appropriate controls are put into place to address the concerns. If there is no reasonable risk – for example, no one in the workplace has been exposed and all appropriate measures have been put into place to mitigate the risk, an employee is required to report to work, even if they don't feel safe.

If they still refuse it, the employer can consider putting the employee on an unpaid leave of absence in which case employers would not cite shortage of work on the ROE it would be "leave of absence" (Code N).

## Q: If the employer has done their due diligence in creating a safe workplace but the employee still refuses to work and granting a leave of absence is not possible given they are an essential full-time worker, can we change their contract or hire a new person to take over?

**A:** Ultimately, employers may need to treat the employee's refusal to return to work as a resignation in which case it is best to seek legal or HR advice to end the employee's employment. They would be deemed to have abandoned their job and resigned; however, there may be legal implications of proceeding with the resignation without first seeking the advice of an employment lawyer.

## Q: In the case of an employee requesting to take an unpaid leave due to COVID, how can the employee ensure they are paid during this time?

**A:** Employees can request to be paid out banked overtime, sick leave or vacation to cover this unpaid leave. However, it is important to note that employers cannot force their employees to take their vacation time as per employment legislation.

Alternatively, an employee can apply for the CERB if they are taking a COVID-related leave of absence from work as long as they have stopped working for at least 14 days.

## Q: How do we ask the employee to verify that they are required to be away from work to take care of a loved one etc.?

**A:** Employees should not be asked to verify time off if they themselves are sick with COVID or if they have a family member sick with it. This can become a privacy issue. If an employee is requesting time off to care for children due to school or daycare closures or inability to find appropriate care for their children, then the employer can ask for documentation confirming the circumstances.

## Q: How do I deal with a high-risk employee (greater risk of contracting COVID-19 or of having more severe complications from the virus) or an employee with childcare issues refusing to come to work?

**A:** Higher risk employees may qualify for an accommodation under Human Rights legislation. In those cases, employers would want an employee to complete a request for accommodation form/letter outlining their reasons for the request and any limitations they have given their medical condition. Be mindful that an employee does not generally have to disclose a diagnosis or a medical condition to their employer, only their limitations. It is best to have their request in writing in case employers are not able to provide an accommodation and need to deny their request.

Employers would view it as any other medical accommodation request and would have to find ways for that individual to either work from home or work away from patients and colleagues to limit risk of possible exposure to infection. The employer is required to provide a suitable accommodation up to the point of undue hardship.

This is similar for childcare issues, where an employee can show they have exhausted all attempts to address their childcare concerns, or in caring for a sick relative, the employer has a duty to accommodate as this circumstance raises potential family status implications under Human Rights legislation. Employers should be clear with employees about the extent of the accommodations that can be provided without causing undue hardship. Employees who cannot be accommodated should be granted an unpaid leave.

## Q: Are employers required to provide paid sick leave if a symptomatic employee is sent home and paid sick leave has not been provided previously?

**A:** Employers are not required to provide paid sick leave to employees; however, they are required to provide the legislated job protected leaves, including the COVID-19 leave. These leaves are all unpaid. However, employers who do not offer paid sick leave benefits run the risk of employees coming into work when they are sick or have symptoms given the disincentive of staying home without pay. It may be beneficial to review your paid sick leave policy to address COVID-19 specific situations.

## Q: Does an employer have to provide employees with the same job and compensation after the layoff period?

**A:** Yes, to some degree. There may be circumstances where employers have to revise an employee's job tasks or responsibilities due to this pandemic; however, any reduction in compensation (or change in reporting relationship) creates a risk of constructive dismissal claims. It is recommended employers seek legal advice if they plan to do this. These are unprecedented times and there is really no case law on what percentage or total compensation reduction would constitute constructive dismissal.

## Q: Can employees be brought back on a part-time basis?

**A:** Employers have the management right to make reasonable changes to the employment relationship. However, if the employer makes a unilateral and substantial change to a fundamental term of employment, including an employee's hours of work and/or pay, then that constitutes constructive dismissal. In order to minimize the employer's risk and liability, they should not implement any substantial changes without a written agreement from the employee(s). If an employee agrees to such changes, it is recommended the agreement be clearly limited to the unprecedented circumstances we are in and be temporary in nature.