

Updates to CEWS 2.0 and an Updated CEWS FlowChart

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As a follow up to the Government's [October 9 announcement](#), the Government released [Bill C-9](#) on November 2, 2020 to make the promised updates to the Canada Emergency Wage Subsidy 2.0 ("CEWS") program, and also introduced the Canada Emergency Rent Subsidy (CERS). The Bill passed third reading in the House of Commons on November 6, 2020 so its enactment is pretty much a sure thing. This short blog focuses on the updates to CEWS.

As of November 1, 2020, \$46.8 billion of CEWS has been paid out. At the height of the program, 3.8 million employees were supported by the CEWS with respect to Claim Period 3.^[1] The claims have been quite a bit less than the [\\$82.3 billion](#) Liberal government budgeted for CEWS in its fiscal and economic snapshot presented on July 8, 2020. This may partially be due to the complexity of the CEWS regime and the fact that CEWS applications for any of the Claim Periods are not due until after 2020.

The changes that Bill C-9 will make to the CEWS are summarized below. For the most part, the changes are mechanical and does not significantly change the CEWS rules. Except otherwise noted, all changes will be made effective retroactively to April 11, 2020 provided Bill C-9 receives Royal Assent.

- New Claim Period 10 is created for eligible remuneration in respect of weeks from November 22, 2020 to December 19, 2020. Subsequent Claim Periods can be created by Regulations (which will not require further Parliament approval) until June 30, 2021;
- The Base Percentage calculation will be frozen at Claim Period 8's level (i.e. 0.8 of Revenue Reduction Percentage) all the way to the end of Claim Period 10;
- For Claim Periods 8 to 10, the Top Up Percentage will be based on the greater of the revenue decline between the three-month comparison and the single month comparison. For example, for Claim Period 8 (September 27, 2020 to October 24, 2020), if average monthly qualifying revenue declined 50% for July, August, and September 2020, compared to July, August, and September 2019, but the qualifying revenue declined by 70% for October 2020 compared to October 2019, the Top Up Percentage for Claim Period 8 will be determined based on the 70% revenue decline;
- Eligibility for the asset sale qualifying revenue continuity election in subsection 125.7(4.1) is expanded significantly. Previously, in order for a buyer of business assets to inherit the qualifying revenue of the seller, the assets sold must constitute all or substantially all of the fair market value of the business properties' of the seller (among other conditions). The amendment relaxes this requirement: provided the seller and buyer dealt at arm's length with each other, this condition can be met if the buyer purchases all or substantially all of the properties that can reasonably be regarded as being necessary for the buyer to carry on part of a business of the seller. This can be very good news for employers who are expanding their business during the Covid pandemic through asset acquisitions;
- Under the previous rules, there was some concern that the joint venture qualifying revenue election and the non-arm's length consolidation qualifying revenue election were not available after Claim Period 4 due to a glitch in the legislation. Not surprisingly, this new version corrected the legislation to ensure availability of those elections for all Claim Periods;

- The deadline for filing a CEWS claim for a Claim Period will be the later of January 31, 2021 and 180 days after the end of that Claim Period. This means that claims for Claim Periods 1 to 5 must be filed or amended by January 31, 2021, and the due dates of the subsequent periods will be:
 - Claim Period 6: February 25, 2021 (i.e. 180 days after August 29, 2020)
 - Claim Period 7: March 25, 2021 (i.e. 180 days after September 26, 2020)
 - Claim Period 8: April 22, 2021 (i.e. 180 days after October 24, 2020)
 - Claim Period 9: May 20, 2021 (i.e. 180 days after November 21, 2020)
 - Claim Period 10: June 17, 2021 (i.e. 180 days after December 19, 2020);
- Relaxation of the employed “in Canada” requirement for eligible employees, so that an employee can qualify as long as the employee was employed “primarily” in Canada throughout the portion of a Claim Period that the employee was employed. Note that this particular change will take effect only on the date Bill C-9 receives Royal Assent;
- For Claim Periods 5 and subsequent, if an employee was on Employment Insurance (EI) parental leave or other EI leave under subsection 12(3) of the EI Act throughout July 1, 2019 to March 15, 2020, baseline remuneration testing period for that employee may be elected to be the 90-day period prior to the commencement of leave; and
- Starting September 27, 2020, any historic and prospective CEWS elections may be amended or revoked on or before the filing due date for the first Claim Period in respect of which the election was made.

We have also updated our [CEWS Flowchart](#) to reflect these changes.

Hopefully, Covid 19 will be under control by June 2021, and this will be the last time Canada extends the CEWS program.

[1] The Government of Canada regularly updates CEWS claim data on its website: <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy/cews-statistics.html>