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COVID-19/CANADA

COVID-19 WAGE SUBSIDY BILL RECEIVED ROYAL ASSENT ON APRIL 11, 2020

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Bill C-14: A second Act respecting certain measures in response to COVID-19 (the "**COVID-19 Wage Subsidy Bill**") – the second piece of emergency legislation of the COVID-19 pandemic – received royal assent on Saturday, April 11, 2020. The COVID-19 Wage Subsidy Bill allows the federal government to proceed with the previously announced \$73 billion wage subsidy program for employers seeking relief for wage obligations in a declining economic climate.

The following are highlights of the COVID-19 Wage Subsidy Bill which provide additional details and confirm the announcements from last week:

- The Canada Emergency Wage Subsidy ("**CEWS**") provides a 75% wage subsidy to employers, up to \$847 per week per employee, for 12 weeks, retroactive to March 15, 2020;
- The list of entities eligible for the CEWS includes corporations, individuals, registered charities (other than public institutions), agricultural organizations, boards of trade and chambers of commerce, nonprofit corporations for scientific research and experimental development, labour organizations, certain not-for-profit organizations such as clubs, societies or associations, partnerships, and other prescribed organizations. The COVID-19 Wage Subsidy Bill leaves open the possibility of other entities being included on this list;
- For the CEWS, the wages eligible for the subsidy are based on the average amount of weekly eligible remuneration paid to the employee between January 1, 2020 and March 15, 2020. Certain amounts are excluded. The precise calculation is extremely technical;
- Under the CEWS, there are three qualifying periods: (i) March 15, 2020 to April 11, 2020; (ii) April 12, 2020 to May 9, 2020; and (iii) May 10, 2020 to June 6, 2020;
- The COVID-19 Wage Subsidy Bill allows the government to extend the CEWS for additional periods up to September 30, 2020. Any further extension would require regulation or an amendment to the bill;
- As previously announced, employers must demonstrate a revenue loss of 15% in the first period to be eligible for the CEWS and a 30% decrease in revenue for subsequent periods ("**Revenue Loss Threshold**");
- For the Revenue Loss Threshold calculation, employers have the option of comparing their revenue in March, April, and May 2020 to that of the same month in 2019 or against the average of their revenue earned in January and February 2020. This option provides flexibility to employers in sectors that faced difficulties in 2019, high-growth firms, nonprofits and charities, and businesses established after February 2019. Employers that choose to compare their revenue against their average revenue in January and February 2020 must do so for all qualifying periods;
- CEWS applications must be submitted and received by the government before October 2020. Employers should avoid leaving applications to the last minute as it is not clear whether applications submitted will be received on the same date;
- The CEWS application will require individuals who are principally responsible for the financial activities of the employer to attest that the application is complete and accurate in all material respects. Chief Executive Officers, Chief Financial Officers, and Treasurers should take note of this obligation;
- The rules for calculating revenue varies depending on the type of entity. Calculations should be based on the inflow of cash, receivables, or other consideration arising in the course of the ordinary activities of the entity – generally from the sale of goods, the rendering of services, and the use by others of resources of the eligible entity;
- Revenue should be calculated using normal accounting practices. Employers may elect to use a cash accounting or accrual method. However, the election to use a cash accounting method will apply to all qualifying periods;
- Satisfying the Revenue Loss Threshold in one period allows the employer to automatically qualify for the CEWS in the subsequent period;
- The overpayment wage subsidy formula in the COVID-19 Wage Subsidy Bill, confirms the federal government's previous announcement that employers will be fully refunded for certain contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund would apply to employer-paid contributions for eligible employees for each week the employee is on leave with pay. Further details of this refund may be provided in the CEWS application or in future regulations.
- Employers who engage in artificial transactions to reduce their revenue must repay the amount of the subsidy that was improperly claimed and pay a penalty equal to 25% of the value of the subsidy claimed; and
- The government has the ability to publicly share the name of employers who have applied for the CEWS.

Employers can apply for the CEWS through the Canada Revenue Agency's

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My Business Account portal. More details about the application process are expected to be announced shortly. For official Government of Canada updates and information about Canada's response to COVID-19, visit: <http://canada.ca/coronavirus/>.

Dickinson Wright's teams in Canada and the U.S. are available to assist with navigating these programs. Please Note: These materials do not constitute legal advice. Government initiatives, announcements, and regulations in response to the COVID-19 situation continue to evolve and change frequently. As such, it is important to ensure you are aware of current information and that you consult with a lawyer before making your business decisions. For further information, please contact the authors.

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