

(Re)-Open for business: The impact of timing on CEWS and CERB

Now that provinces have implemented reopening strategies, businesses may be looking to rehire employees who were previously put on unpaid leave or laid-off altogether. Employers transitioning their businesses into the “new normal” would like this transition to flow as seamlessly as possible. To achieve this, both the employer and employee should know the implications and interactions between two government subsidy programs: the Canadian Emergency Wage Subsidy (CEWS) and the Canadian Emergency Response Benefit (CERB).

If you are an employer who has applied, or plans to apply, for CEWS or an employee who has previously applied for CERB, it's important to understand the interplay between these two programs to get the timing right so the return to work for employees and employers can be as smooth as possible.

What is CEWS?

CEWS is a program implemented to provide financial support directly to businesses in an effort to encourage businesses to keep their employees on payroll. CEWS, also referred to as the 75 percent wage subsidy, can provide significant financial relief by subsidizing employee wages and salaries, where revenues have declined and other transition expenses have consumed cash flow. This program has already provided many businesses with financial support during these challenging times and, with the recent government announcement extending CEWS into August 2020, can potentially help many more employers who are looking to rehire their staff.

Is my business eligible for CEWS?

A business is eligible for CEWS if it meets the definition of an eligible entity.¹ Once you determine that your business meets that definition, you will then need to determine which employees would qualify as an “eligible employee,” in order to claim the CEWS on their remuneration.

An eligible employee is defined as an individual, employed in Canada by an eligible entity, other than an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the claim period. When rehiring employees, keep in mind that the definition of eligible employee specifically excludes individuals who are without remuneration in respect of 14 or more consecutive days in a qualifying period.

CEWS claim periods ²		
First claim period	Second claim period	Third claim period
March 15 - April 11, 2020	April 12 - May 9, 2020	May 10 - June 6, 2020
Fourth claim period	Fifth claim period	Sixth claim period
June 7 - July 4, 2020	July 5 - August 1, 2020	August 2 - August 29, 2020

1 The purpose of this tax alert is not to outline the criteria to determine when a business is eligible for CEWS; rather, it is to discuss the CEWS from the perspective of the impact on the employee. For a more detailed analysis on the CEWS, visit Grant Thornton's COVID-19 hub.
 2 In the CEWS legislation, the claim period is referred to as the “qualifying period”—see subsection 125.7(1) of the Income Tax Act.

Consider the following scenario:

SCENARIO #1A: Jason is laid off

- Due to significantly reduced sales resulting from the pandemic, Jason was laid off on April 14, 2020 by his employer, Pizza Haven.
- Due to the reduction in sales, Pizza Haven is an eligible entity that qualifies for the CEWS for the claim period April 12 - May 9, 2020.³
- On May 4, 2020, Pizza Haven rehired Jason, who immediately started working on this date.
- From May 4, 2020 to May 9, 2020, Jason earned \$1,000 of gross wages.

In this scenario, since Jason was without remuneration from April 14 to May 3, 2020, being a period of 14 or more consecutive days, Jason would not be an eligible employee for CEWS purposes for the claim period April 12 to May 9, 2020 (even though Pizza Haven would qualify). Pizza Haven would not be eligible to claim the CEWS in respect of the \$1,000 of gross wages earned by Jason.

SCENARIO #1B: Jason is back at work

Same facts as above, except we are now looking at the next claim period: May 10 - June 6, 2020.

- Pizza Haven still qualifies for the CEWS due to decreased sales.
- Jason is working during the entire claim period and earns \$1,000 of gross wages per week.

In this scenario, Jason is working during the entire claim period and, therefore, would be considered an eligible employee for CEWS purposes. Pizza Haven would be able to claim the CEWS on Jason's wages for each week during the claim period.⁴

In the scenarios above, Pizza Haven was only able to claim the CEWS on wages paid to Jason in the claim period May 10 - June 6, but not in the one prior. Pizza Haven might have considered rehiring Jason six days later, on May 10, so that it could claim the CEWS on all wages paid to him.

Alternatively, it could consider hiring him back at an earlier date and paying him retroactively, such the length of time that he is without pay in the claim period April 12 - May 9 is less than 14 days. Of course, Pizza Haven should take its own business needs into consideration, as well as the impact on its CEWS eligibility. Furthermore, Pizza Haven may need to consider whether Jason, or any of its other employees, have applied for, and are receiving, the CERB.

³ For the claim period April 12 - May 9, 2020, Pizza Haven would be a qualifying entity if its revenue for April 2020 was at least 30 percent lower than revenue in either (i) April 2019 or (ii) the average revenue for January and February 2020, assuming Pizza Haven elects to use (ii) as its "prior reference period" for all periods. Pizza Haven could also qualify for the claim period April 12 - May 9, 2020 if it had already qualified for the immediately preceding claim period.

⁴ Assuming Jason is not related to Pizza Haven, [i.e. he is an arm's length employee] and that his wages after March 15, 2020 were not reduced, Pizza Haven would be able to claim CEWS of \$750 per week with respect to Jason (calculated as the lesser of \$847/week and 75 percent of \$1,000, Jason's gross weekly pay).



What is the CERB?

As pandemic restrictions continue to be lifted, employees are increasingly being called back to work. Some of these employees may currently be receiving the CERB. The CERB is intended to provide financial support to Canadians who were directly impacted by COVID-19 for up to 24 weeks.⁵

Do I need to repay CERB?

Individuals who have applied for CERB and are in their first eligibility period of the program cannot earn more than \$1,000 in employment and/or self-employment income during any 14 consecutive day period within the initial four-week period. Individuals collecting CERB in a subsequent eligibility period cannot earn more than \$1,000 in employment and/or self-employment income during the entire four-week period. Failure to meet these conditions can result in the requirement to repay the \$2,000 benefit received for the particular eligibility period.

⁵ When originally introduced, the CERB was available for a maximum of 16 weeks. Individuals would apply to receive \$2,000 in each four-week period as noted in the table above. On June 16, the CERB was extended to up to 24 weeks. It is available until October 3, 2020 and applications must be made no later than December 2, 2020.

CERB claim periods

First claim period	Second claim period	Third claim period
March 15 - April 11	April 12 - May 9	May 10 - June 6
Fourth claim period	Individuals will likely continue to apply for CERB in four-week increments. It is not yet clear whether the extension to October 3 will have any effect on this.	
June 7 - July 4		

SCENARIO #2: Marielle's first CERB period



- Marielle was laid off on March 15, 2020 by her employer, Photo Plus, and immediately applied for CERB for the period March 15 - April 11, 2020 (her initial four-week claim period).
- On April 11, 2020, Marielle applied for her second claim period: April 12 - May 9, 2020.
- Photo Plus rehired Marielle on May 1, 2020.
- From May 1 to May 9, 2020, Marielle earned \$1,250 of gross wages.

During Marielle's initial CERB claim period, being March 15 - April 11, 2020, she did not earn \$1,000 or more in employment income during any 14 consecutive day period. As such, Marielle qualified for the CERB for the initial claim period and would not be required to repay this amount.

During Marielle's second CERB claim period, being April 12 - May 9, 2020, she earned \$1,250 in employment income. Since Marielle earned more than \$1,000 in employment income during her second CERB period, she would not be eligible for her second CERB claim period. Marielle would be required to repay the \$2,000 CERB benefit received in respect of her second claim period.

Can I claim CEWS if an employee is claiming CERB?

Short answer: yes, an employer can claim the CEWS program for eligible remuneration paid to an employee who is also claiming the CERB.

When determining if an employer can claim a subsidy amount for an employee, it is the employer's responsibility to determine whether or not an employee meets the conditions to be considered an "eligible employee" for the CEWS program. However, it is not the employer's (but rather the employee's) responsibility to determine whether or not the employee is eligible for the CERB. As a result, an employer can claim the CEWS on eligible remuneration paid to an eligible employee in respect of a particular claim period, whether or not that employee receives the CERB.

Employers who are considering rehiring their employees will need to understand the potential timing implications of bringing these individuals back to work. If the employee is rehired in the middle of a claim period, it could impact the employee's ability to qualify for the CERB and may require that employee to repay CERB amounts previously received. If this is the case, the employer may have difficulties in getting employees to return to work.



Any employee without pay in respect of a period of 14 or more consecutive days in a claim period are not eligible for CEWS.

SCENARIO #3: Levi is rehired, CERB and CEWS



- Levi was laid off on April 11, 2020.
- On April 12, Levi applied for CERB for his initial CERB period, April 12 - May 9, 2020.
- On May 10, Levi applied for CERB for his second CERB period, May 10 - June 6, 2020.
- Slick Auto rehired Levi on May 20, 2020 and he immediately started working on this date.
- Slick Auto plans to apply for the CEWS program for the period May 10 - June 6, 2020.
- From May 20, 2020 to June 6, 2020, Levi earned \$2,400 of gross wages.



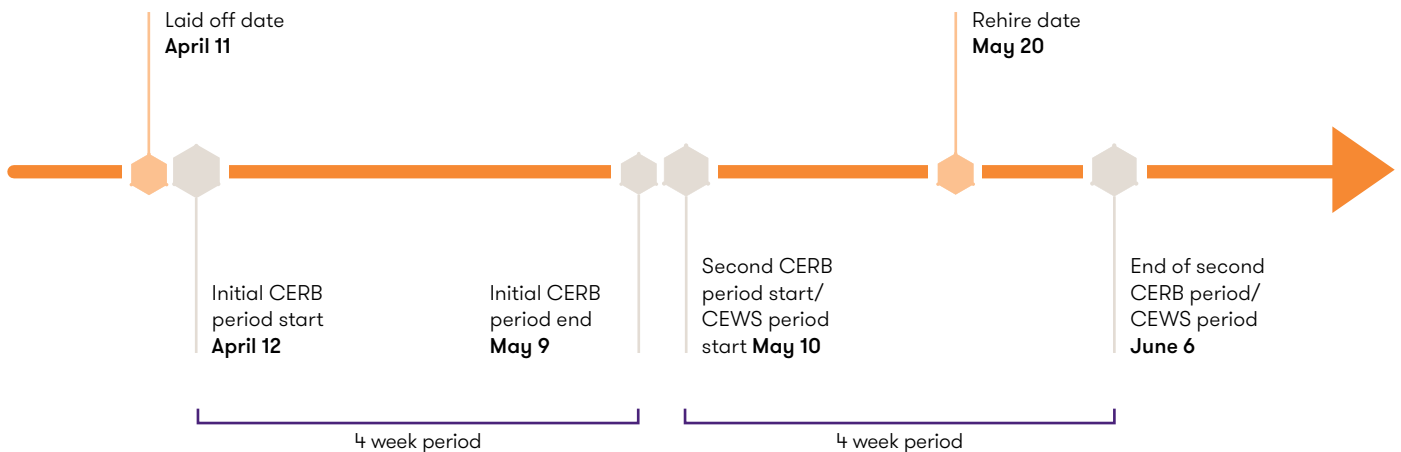
CEWS eligibility: Slick Auto (in respect of Levi's remuneration)

For Levi to be considered an eligible employee for CEWS purposes in the claim period when he was rehired, he must not have gone without remuneration in respect of 14 or more consecutive days. Since Levi was rehired on May 20, it would only have been a period of 10 consecutive days (i.e., May 10 to 20) that he would have been without work or remuneration. As such, Levi would be an eligible employee in respect of Slick Auto's CEWS claim period and Slick Auto would be eligible to claim the CEWS on the remuneration paid to Levi, subject to the limits on the amount that can be claimed.

CERB eligibility: Levi

In Levi's initial CERB claim period, April 12 - May 9, 2020, he did not earn more than \$1,000 in employment income during any 14 consecutive day period. Levi would be eligible for his first CERB period.

In Levi's second CERB claim period, being May 10 - June 6, 2020, he was rehired and earned \$2,400 in gross wages. Since Levi earned more than \$1,000 during the four-week period, he would not be eligible for the CERB. As such, Levi would be required to repay the \$2,000 CERB previously received in respect of his second CERB claim period.



Overall result

On a dollar-for-dollar basis, it is not actually clear whether Levi would have been better off if he had not returned to work and kept the CERB instead of returning to work and repaying the CERB. Although on a gross basis, Levi received more in wages (\$2,400) than he did in CERB (\$2,000), on a net basis, it is possible that his wages, after CPP, EI and any other potential deductions, would be lower or very close to the \$2,000 received via the CERB.⁶ Furthermore, even if Levi would have received more through wages than through CERB, would it be worth it to him to give up an extra \$400 to stay home an extra 18 days (May 20 to June 6)?⁷

It may have been better for Slick Auto to have hired Levi back a week earlier, which would presumably have resulted in Levi being paid closer to \$3,500, all things being equal. This would potentially give Levi—or any other employee in a similar situation—less reason to refrain from returning to work. Alternatively, Slick Auto could have waited until the following period to rehire Levi (assuming it still qualified for the CEWS in that period).

Boiling it down: Timing is everything

As you can see, the timing of rehiring employees can impact both CERB and CEWS eligibility for both the employee and employer. While these programs can provide significant financial support to employees and employers, understanding the timing of bringing employees back to work is vitally important. Employers need to examine the timing of rehiring on an employee-by-employee basis to understand the impact on each program and each employee. If you are unsure how to go about this, keep these things in mind:



Timing is everything.



Talk to your employees (or employer). It is important to have this conversation before finalizing decisions to make sure each of you has the information you need to understand the implications of resuming work.



Talk to your advisor. We all want a smooth transition. If you are unsure, need clarification or simply need a sounding board to talk through your thoughts, don't hesitate to reach out.

⁶ Note: both amounts are subject to income tax at the taxpayer's marginal tax rate; however, only income is subject to withholding tax. For purposes of this analysis, taxes on income and CERB are ignored.

⁷ The question of whether or not Levi is within his legal right as an employee to refuse to return to work due to COVID-19 is not within the scope of this discussion. However, it is an important consideration for both employee and employer. Legal advice should be sought if this is being contemplated.

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