



## COVID-19 UPDATE, May 20, 2020

### *Introduction:*

This brief weekly update is aimed at keeping employees and employers informed of COVID-19 related changes in the world of employment. To find more answers to common employment questions, you can:

- Visit the [Levitt LLP website COVID-19 page](#).
- Read [Howard Levitt's columns in the National Post](#).
- Listen to Howard Levitt and the other lawyers from Levitt LLP on [Newstalk 1010](#).
- For a summary of key employment issues, such as whether your employer has a right to place you on a temporary lay-off and your right to a safe workplace, [contact us to](#) request the COVID-19 Bulletins previously circulated by Levitt LLP.

**Important:** Every one's circumstances are different. The information provided in this bulletin and at the above resources is for general information purposes only and is not intended to be legal advice.

If you are interested in obtaining legal advice for your specific problem, you can contact us to book a **free consultation on COVID-19 related issues**. To set up a consultation, call us now at 416-594-3900 or complete [this form](#).

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## 1. Q & A with Levitt LLP Lawyer Rob Lilly



Rob Lilly is widely known and respected by other lawyers for his confidence and tenacity in everything he does. Clients describe him as “tireless”, “intelligent” and “compassionate”.

Whether negotiating a large long-term disability settlement or helping an executive get a bonus wrongfully withheld, Rob will not let up until justice is served.

Rob is Levitt LLP’s long-term disability law specialist. He has recovered millions in long-term disability settlements for his clients. He also practices in employment law, personal injury, and commercial litigation.

Rob has appeared before all levels of court in Ontario including the Ontario Superior Court of Justice, Divisional Court of Justice and Court of Appeal along with various administrative tribunals.

### Q & A

**Q: People have a lot of questions about what they can and can’t do during this COVID-19 pandemic. What is one of the biggest mistakes you see people making?**

Employees blindly accepting a layoff when they have no obligation to do so.

**Q: What is the biggest point of confusion you see among people coming to you for advice?**

People think that since the Ontario *Employment Standards Act*, 2000 permits a layoff (of up to 13 weeks without benefits or 35 weeks with benefits), they have no recourse. This is false. Unless the employment contract expressly allows for a layoff or the business has been ordered closed by the government, a layoff will likely be considered a constructive dismissal by the courts and employees are entitled up to 24 months of notice or pay in lieu of notice.

**Q: What is one tip you would give to employees in the current climate? / What is one tip you would give to employer?**

Employees: Do not accept a layoff without getting legal advice. If employees accept the layoff without conditions, they give up any lost wages during the layoff period and the ability to commence a claim at any point during the layoff period, as the weeks turn into months, if they believe they unfairly have not been called back to work.

Employers: Continue group benefits during the layoff period. Doing so extends the statutory layoff period to 35 weeks and avoids an automatic termination at 13 weeks at which point statutory termination pay and severance pay must be provided. It will save employers money in the long run assuming employees can be recalled within 35 weeks.

**Q: Can you give us an example of a creative solution you have recently proposed to an employer or employee?**

An employer wanted an employee to agree to a 20% pay reduction. The employee wanted to continue working and was inclined to agree outright. However, I convinced the employer to offer a workshare program. While the employer still reduced the pay to 80%, the employee took Fridays off and received EI benefits for those days off.

**Q: Courts and tribunals are currently closed. How have you continued advocating for your clients?**

I find a demand letter and a frank follow up discussion with the opposing lawyer often resolves the matter without even having to issue a claim. In the more complex cases, I issue claims online and serve them via email. I then push the actions forward with online virtual mediations.

**Q: What are you doing to ride out this crisis?**

When I'm not tending to pandemic related employment emergencies, I am spending quality time with my wife and toddler, tending to our garden or doing a virtual spin class.

## **2. Canada Emergency Wage Subsidy (CEWS) extended until August 29, 2020**

On May 15, the federal government announced that the CEWS would be extended by an additional 12 weeks until August 29, 2020. There remains the possibility that the program could be extended until the end of September.

The government initially said that the program would be offered for 12 weeks between March 15 and June 6, 2020.

In addition, the government announced the eligibility for the program would be expanded to include the following:

- partnerships that are up to 50-per-cent owned by non-eligible members

- Indigenous government-owned corporations that are carrying on a business, as well as partnerships where the partners are Indigenous governments and eligible employers
- registered Canadian amateur athletic associations
- registered journalism organizations
- non-public colleges and schools, including institutions that offer specialized services, such as arts schools, driving schools, language schools or flight schools.
- making it easier to qualify by lowering the required 30% drop in business

In addition, the government is considering lowering the current 30% revenue decline threshold to be eligible for the program.

In brief, the CEWS is a program intended to assist those employers who are struggling to retain workers during the COVID-19 pandemic. It provides a subsidy which will cover 75% of an employee's wages (up to \$847 a week), for employers who have dropped at least 15% in gross revenues in March, and 30% in April and May and following of this year.

For more information about the program, including information on how to apply, visit [this website](#).

### **3. Federal government expands eligibility for emergency loans (CEBA)**

The federal government has announced expanded eligibility for emergency business loans in the Canada Emergency Business Account (CEBA).

The CEBA is a \$40,000 no-interest loan that is available to small businesses that have a payroll of less than \$20,000, a business bank account, filed taxes in 2018 or 2019, and have eligible non-deferrable expenses (such as rent, property taxes, utilities, insurance) between \$40,000 and \$1.5 million.

In addition to being interest-free, 25 per cent of the loan is forgivable if borrowers repay it before the end of 2022.

The loan will now be available to businesses with sole proprietors, those that rely on contractors, and family-owned businesses that pay employees through dividends rather than payroll. For instance, this means that hair salon owners and independent gyms may be eligible for the loan.

Business owners can apply for the program through their banks and credit unions. More information about the program can be found at [this website](#).

### **4. Canada's chief health officer recommends the use of face masks**

Canada's chief public health officer, Dr. Theresa Tam, has officially recommended that Canadians wear non-medical face masks when physical distancing is not possible.

This was a change from previous language which had been “permissive” regarding the use of masks, to a “specific recommendation”.

Public Health Canada has not made the use of masks mandatory to permit local public health officers to respond directly to unique needs.

Nevertheless, the advice may have implications for employers who are required by occupational health and safety legislation to take all reasonable precautions to provide a safe workplace. Requiring the use of masks when physical distancing is not possible will now likely be considered a reasonable precaution.

#### **5. Canadian software engineers create an online resource to help individuals and businesses identify government support**

“Corona Support” is a web-based tool that uses a simple survey to help individuals and businesses identify what federal and provincial government support programs they may be eligible for.

The survey asks simple questions and only takes a couple minutes to complete. It then provides the user with a list of programs they are likely eligible for along with information about how to apply.

Corona Support is a volunteer organization that was created by a group of Canadian software engineers to help Canadians confused by the number of government programs and rules about qualifying for them.

Corona Support can be found at [this website](#).

#### **6. Applications for emergency commercial rent assistance open soon**

The Canada Emergency Commercial Rent Assistance (CECRA) program provides relief to small businesses that are experiencing financial difficulties because of COVID-19.

The program offers unsecured, forgivable loans to commercial property owners so that they can reduce the rent owed by impacted small business tenants while meeting their operating expenses on those commercial properties.

The loan will cover 50% of three months’ rent payments (April, May, and June) that are payable by eligible small business tenants.

Eligible small businesses are those paying less than \$50,000 per month in rent and who have temporarily ceased operations or have experienced at least a 70% drop in pre-COVID revenues. The program is also available to non-profit and charitable organizations.

For the loan to be forgiven, the mortgaged property owner must agree to reduce the small business's rent by at least 75% under a rent forgiveness agreement and not evict the tenant while the agreement is in place. The small business will be required to pay the remaining 25% of the rent.

The program is the result of cooperation between the federal and provincial and territorial governments and will be administered through the Canada Mortgage and Housing Corporation.

Applications will be accepted starting May 25.

## **7. Ontario schools to remain closed**

On May 19, 2020, the Ontario government announced that publicly funded schools in Ontario would remain closed until September due to COVID-19.

Online learning for children will continue for this school year and classroom teaching will not resume until after the summer. In addition, private schools, licensed childcare centers, and EarlyON centers will also remain closed.

This may have implications for employers who are accommodating employees with children who need supervision.

Family status (which includes childcare obligations) is a protected characteristic under human rights codes, and employers have a duty to accommodate human rights code up to the point of undue hardship.

***Co-authored by Levitt LLP Articling Students Michael VanderMeer and Sarah Helmer.***

### **DISCLAIMER:**

Remember, this bulletin provides only general information and is not a substitute for legal advice. If you have a legal problem, you should seek out legal advice before making any decisions. The fact that you have received this bulletin from Levitt LLP or have communicated with members of Levitt LLP does not create a lawyer-client relationship.

If you want legal advice, you can set up a consultation with Levitt LLP by calling us at 416-594-3900 or be completing [this form](#).

