



COVID-19 UPDATE: October 7, 2020

Introduction:

This brief bulletin is aimed at keeping employees and employers informed of COVID-19 related changes and concerns 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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PAUL SCHWARTZMAN

Levitt LLP Lawyer

Paul Schwartzman is an experienced labour and employment lawyer.

Throughout his career, Paul has successfully represented both employers and employees before the courts, administrative tribunals, and

arbitrators. Understanding that each of his clients' needs are unique, Paul's approach and strategy is always tailored exclusively to each of his clients, based on their particular case.

Early on in his career, Paul primarily represented employees and was successful in litigating employment disputes before the courts, while working for a boutique firm. Throughout the past 4.5 years, Paul exclusively represented employers in providing labour, employment, human rights, and general human resources representation and advice to public and private sector employers while working at the largest labour and employment law firm in the country. Paul also has significant experience in successfully litigating complex civil actions involving wrongful competition, fraud, and labour disputes.

Having acted on hundreds of cases for both employers and employees, Paul can quickly decipher the strengths and weaknesses of his opponents' positions in ensuring that his clients obtain the best results. Paul has a deep understanding and unique perspective of the strategy required to litigate a labour or employment case to its successful conclusion.

Paul is a problem solver and is always open to finding creative and efficient ways to assist his clients. However, Paul will also never hesitate to litigate on behalf of his clients as he enjoys the challenges of litigation and has a strong passion for advocacy.

Paul is a graduate of Queen's University's joint Master of Industrial Relations/Juris Doctor (MIR/JD) Program. Paul also previously obtained a Bachelor of Commerce from McGill University where he graduated with "distinction" and pursued a concentration in labour-management relations.

Paul currently sits on the Executive of the Ontario Bar Association's Labour and Employment Law Section. He was called to the Bar in 2013.

1. Q&A with Levitt LLP Lawyer Paul Schwartzman

Q: People have a lot of questions about what they can and cannot do as the province transitions out of the state of emergency and into the 'new normal'. What is one of the biggest mistakes you see people making?

A: Making erroneous assumptions regarding employer and/or employee rights based on what they have read on the internet and acting upon them without having received legal advice.

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

A: That there is only one clear black and white answer to every question. This is almost never the case. It's a question of finding out their objective and then strategizing accordingly.

Q: What is one tip you would give to employees in the current climate? What is one tip that you would give to employers?

A: Employees: if your employer is making changes or attempting to make changes to your employment, seek legal advice immediately before acting. You may be entitled to severance. You do not necessarily have to accept the change.

Employers: seek legal advice before ending an employment relationship regarding what should be offered as an appropriate severance package. If you are relying on a contract of employment, have it reviewed.

Q: Courts and tribunals are currently closed. Have you found any creative solutions for advocating for your clients remotely?

A: Yes, participating in virtual mediations with effective mediators. In many cases this will lead to successful resolutions or at the very least, a chance to further advance your case.

Q: What are you doing to ride out the crisis?

A: Working hard in a very busy environment and enjoying time with my young family.

2. The "new CERB": The COVID-19 Response Measures Act

On September 28, 2020, the federal government introduced new legislation that proposed three temporary recovery benefits to support those who are unable to work due to COVID-19. Bill C-4, the COVID-19 *Response Measures Act* (the Act), became law on October 2, 2020. The legislation is intended to bridge the gap for those who formerly received *Canadian Emergency Response Benefit* (CERB) payments and the need to support Canadians with CERB's absence.

As mentioned in our last bulletin, the three new temporary Canada Recovery Benefits are:

1. **Canada Recovery Sickness Benefit (CRSB)**
2. **Canada Recovery Caregiving Benefit (CRCB)**
3. **Canada Recovery Benefit (CRB)**

Canada Recovery Sickness Benefit (CRSB)

The new Canada Recovery Sickness Benefit (CRSB) will provide \$500 per week, for up to two weeks (available in two one-week periods), effective September 27, 2020 until September 25, 2021.

This benefit is for workers who are unable to work because:

- They have contracted COVID-19;
- They must self-isolate for reasons related to COVID-19; or
- They have underlying conditions, are undergoing treatment, or have contracted other sicknesses that make them more susceptible to COVID-19.

The benefit will be available to Canadian residents who are unable to work and:

- Are at least 15 years of age on the first day of the period for which they are applying for the benefit;
- Have a valid Social Insurance Number (SIN);
- Are employed or self-employed at the time of the application;
- Earned at least \$5,000 in 2019 or 2020, or in the 12 months preceding the day of their application;
- Are not in receipt of paid leave during the period claimed; and
- Are unable to work for at least 50% of the time that they would have otherwise worked or devoted to their work in the week for which they claim the benefit, because:
 - They are sick with or may have contracted COVID-19; or
 - They have isolated themselves on the advice of their employer, a medical or nurse practitioner, a person in authority, a government or a public health authority for reasons related to COVID-19; or
 - They have underlying conditions, are undergoing treatments or have contracted other sicknesses that, in the opinion of a medical or nurse practitioner, person in authority, government or public health authority, would make them more susceptible to COVID-19.

Workers cannot claim the CRSB and receive other paid sick leave for the same benefit period. The new benefit is taxable, and taxes will be removed at source to reduce the amount of tax owing at the end of the year.

Canada Recovery Caregiving Benefit (CRCB)

The new *Canada Recovery Caregiver Benefit* will be effective from September 27, 2020 to September 25, 2021. It will provide \$500 per week, per household. Each household can apply to receive up to 26 weeks of the CRCB, available in one-week periods.

This benefit is aimed to assist those who, as a result of the closure of schools and daycares, are unable to work because they need to provide care for their children or other family members who require supervision.

The benefit will be available to Canadian residents who are unable to work and:

- Are at least 15 years of age on the first day of the period for which they are applying for the benefit;
- Have a valid Social Insurance Number (SIN);
- Are employed or self-employed at the time of the application;
- Earned at least \$5,000 in 2019 or 2020, or in the 12 months preceding the day of their application;
- Are not in receipt of paid leave during the 1-week period claimed; and
- Are unable to work for at least 50% of the time that they would have otherwise worked or devoted to their work in the week for which they claim the benefit, because they had to care for a child **under the age of 12** or another family member who requires supervised care:
 - Because the school, daycare or day program that they normally attend is unavailable, closed or open only at certain times or for certain individuals;
 - Because the care services or the person that usually cares for the child or family member is not available due to COVID-19;
 - Because they are sick and/or have been directed to quarantine for reasons related to COVID-19; or
 - Because they are at high risk of serious health complications if they contract COVID-19.

There is a maximum 26-week entitlement for this benefit. If two or more individuals live in the same house, the benefit can be shared amongst eligible workers (but only one of them may be paid the benefit for a given week).

This new benefit is taxable, and taxes will be removed at source to reduce the amount of tax owing at the end of the year.

Canada Recovery Benefit (CRB)

This benefit will be effective from September 27, 2020 to September 25, 2021. It will provide a benefit amount of \$500 per week, available in two-week periods, for up to 26 weeks for those:

- Who have stopped working and who are not eligible for EI; or
- Had their employment or self-employment income reduced by at least 50% due to COVID-19.

The benefit will be available to residents in Canada who are unable to work and:

- Are at least 15 years of age on the first day of the period for which they are applying for the benefit;
- Have a valid Social Insurance Number (SIN);
- Have stopped working due to the COVID-19 pandemic and are not eligible for EI, or are working and have had a reduction of at least 50% in their employment/self-employment income for reasons related to COVID-19;
- Are available and looking for work, and who must accept work where it is reasonable to do so;
- Had employment and/or self-employment income of at least \$5,000 in 2019 or in 2020, or in the 12-month period prior to their first application for the *Canada Recovery Benefit*;
- Have not quit their job voluntarily, unless it was reasonable to do so; and,
- Have not rejected a reasonable job offer, rejected a request to continue working or failed to resume work if self-employed where reasonable to do so.

To encourage claimants to return to work, workers will be able to earn income from employment and/or self-employment while receiving the benefit, as long as they continue to meet the other requirements.

What is different about this benefit is that all claimants will need to repay some or all of the benefit through their income tax return if their annual net income, excluding the *Canada Recovery Benefit* payment, is over \$38,000.

This equates to claimants repaying \$0.50 of the benefit for each dollar of their annual net income above the \$38,000 mark in the calendar year, up to a maximum of the amount of benefit they received.

3. EI Changes: Hour Credits and Minimums

New EI changes were put in place on September 27, 2020. These include:

- Hour credits;
- A minimum benefit rate of \$500 per week, or \$300 per week for extended parental benefits;
- At least 26 weeks of regular benefits;
- A minimum unemployment rate of 13.1% applying to all regions in Canada; and,
- An EI premium rate frozen at the 2020 premium rate for two years.

Hour Credits to Increase Access

Usually, access to EI benefits is based on the number of insurable hours an individual has worked in the year prior to their application or since their last claim (known as the “qualifying period”). During the pandemic, obtaining these hours is unrealistic as many workers may have been temporarily laid off for prolonged periods or have been required to work fewer hours.

To help individuals qualify with a minimum of 120 hours of work, EI claimants will receive a one-time insurable hour credit of:

- 300 insurable hours for claims for regular and work sharing benefits (job loss); and
- 480 insurable hours for claims for special benefits (sickness, maternity/parental, compassionate care or family caregiver).

The hours credit is retroactive to March 15, 2020. This assists claimants who were looking to transition early from CERB to EI maternity, parental, compassionate care, family caregiver or work-sharing benefits, but had insufficient hours to have an EI claim. Additionally, the qualifying period will be extended for these claimants.

The hours credit will be available for new EI claims for one year.

Minimum EI Unemployment Rate Across Canada

Usually, the amount of EI an individual can receive is based in part on the prescribed unemployment rate for their region. Now, a minimum unemployment rate of 13.1% is being used for all EI economic regions to lower the hours required to qualify for EI benefits. This measure is effective for one year starting on August 9, 2020. In areas with an unemployment rate higher than 13.1%, the benefits will be calculated using the actual rate.

Additionally, there will be a uniform eligibility requirement of:

- 420 hours of insurable employment (before the hours credit is applied),
- A minimum entitlement of 26 weeks of regular benefits, and

- The number of “best earnings weeks” used in the calculation of the weekly benefit rate will be fixed at 14 weeks.

Combined with the hour credits, individuals can qualify for EI with 120 hours of insurable employment.

Freeze to EI Premium Rate

Under the *Employment Insurance Act*, the government has temporarily frozen the EI premium rate for employees at the 2020 level of \$1.58 per \$100 of insurable earnings for two years. The rate for employers will also remain unchanged at \$2.21 per \$100 of insurable earnings.

4. Back to school: What happens if I need to stay home to watch my child?

We are in the midst of what seems to be a “second wave” of COVID-19 and students going back to school may be a large reason for it. The news is constantly being updated with which schools are experiencing outbreaks. So, what happens if your child’s school has an outbreak and they are sent home? Does your employer have to allow you to stay home with them? After all, do you have a choice?

There is no universal Canadian law to respond to this. As each province is governed by its own employment standards legislation and provincial protocols for school outbreaks differ, the answer will depend on the province in which you reside.

In Ontario, the *Infectious Disease Emergency Leave* (IDEL), which has been extended to January 2, 2021, provides one option for parents.

Under the IDEL, employees have the right to take an unpaid leave if they are providing care or support to [certain individuals](#) because of a matter related to COVID-19. An employer cannot threaten, fire or penalize an employee in any way because the employee took or plans on taking a leave under the IDEL.

Employees taking leave to care for a child whose school or daycare was closed because of COVID-19, or because they kept their child home out of fear that the child would be exposed to COVID-19, are specifically included in the IDEL.

In terms of parents’ options during a school outbreak, the IDEL covers caring for a child who stays home because of COVID-19 protocols at their school or daycare.

If the school has reported an outbreak, but has remained open, the leave will also protect an employee who chooses to stay home when their child did not show any symptoms automatically requiring them to stay home (e.g. a fever is a common symptom of COVID-19 that would require

the student to stay home, but body aches may not be a symptom that would require the student to remain home). Where a parent is concerned the child's symptom(s) may relate to COVID-19, especially in light of a recent outbreak at the school, the leave will protect those employee who choose to keep their child at home as a precautionary act.

Additionally, the ***Canada Recovery Caregiving Benefit*** explained above can help parents with children under the age of 12 who require financial assistance during this period.

This leave entitlement is retroactive to January 25, 2020. An employee is entitled to take this leave so long as the conditions are met.

Edited by Levitt LLP Articling Student Tiana Perricone.

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