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# SMALL BUSINESS GUIDE TO COPING WITH COVID-19

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Edmonton • Calgary • Yellowknife

The implications of COVID-19 are being felt at local, national, and international levels. As the threat of this unprecedented virus persists, governments and business owners are forced to respond with various measures to counter the spread of the virus and the impact it has on the operation of business. At this time and in the face of uncertainty many business owners are exercising precaution and preparing as best they can.

### Considerations for Business Owners

**Fulfilling Contractual Obligations** — First and foremost, contact the other party to the contract and request relief in light of the circumstances. If relief is provided, be sure to document specifics including the length of time the relief will be provided. If this is unsuccessful, review your agreement for force majeure provisions or material adverse change provisions. These provisions may allow you to break out of the contract, relieving you of your obligations. If your contract does not contain a provision of this nature, you may still have relief through the legal principle of contractual frustration, which provides similar relief. (For more information click [here](#).)

**Paying the Lease** — The advice above relating to fulfilling contractual obligations also applies to leases. Tenants should consult with landlords and request relief, if required. Alternatively, if relief is not provided, contractual terms or legal principles may apply and you need to review your lease carefully. Note, relief has been granted for residential tenants, click [here](#) for more information and commercial tenants, click [here](#).



**Unable to Pay Utilities** — Small businesses can defer electricity and natural gas bill payments for 90 days, regardless of the service provider. Call your utility provider directly to arrange for a 90-day deferral on all payments. (For more information click [here](#).)

**Business Interruption Insurance or Other Insurance Coverage for Losses** — It is unlikely that business interruption insurance will cover business losses resulting directly or indirectly from COVID-19. An important consideration to keep in mind is that most business interruption policies will provide coverage only when physical loss or damage has been caused to the insured's premises or property used in the operation of the business. Specialty coverage for disruption of business due to a pandemic does exist. But the number of companies that have this type of coverage is limited being that the coverage has always been expensive and limited in scope. Nevertheless, if you are unsure, review your policy and contact your insurer. (For more information click [here](#).)

**WCB Premium Deferral** — WCB premiums may be deferred until 2021 for all employers in Alberta. If 2020 premiums have already been paid, the employer may apply for a rebate or credit.

**Deferring Bank Payments and Accessing Credit** — Most of the major banks have made a commitment to work with small business banking customers on a case-by-case basis to provide flexible solutions to help them manage through challenges due to COVID-19. Some of the measures that have been taken and things to ask about, include:

- Payment deferrals up to 6 months based on small business circumstances;
- Increases to operating line of credit limits;
- Waiving of credit card minimum payments;
- Access additional working capital through the Business Credit Availability Program;
- Loan guarantees and co-lending by the BDC and EDC;
- Bank of Canada overnight interest rate has dropped to 0.25%;

(For more information click [here](#).)

**Canada Emergency Business Account** — The government has launched this account to provide interest-free loans to small businesses and not-for-profits for up to \$40,000, with a 25% repayment forgiveness (up to \$10,000) if the loan is repaid before December 31, 2022. If the loan is not repaid, then it may be converted to an interest-bearing term loan. To qualify, the business or not-for-profit must have paid between \$20,000 and \$1,500,000 in payroll in 2019. Contact your financial institution directly to apply for this loan.

**Filing and Paying Taxes** — Individuals and businesses can defer payment of any income tax amounts between March 18, 2020 and September 2020. These are deferred until August 31, 2020. Most income tax filing and information return filing deadlines have been extended. See all deadlines [here](#). GST/HST remittances have also been deferred to June 30, 2020 and, while there has not been an explicit deferral on the GST/HST return filing deadline, there is no late-filing penalty if not remittance is due.

**Documentation and Records** — It is crucial that businesses maintain meticulous books and records. Be sure to document losses suffered during the pandemic because it could lead to a deduction in terms of an allowable business-investment loss, capital losses and non-capital losses. We also recommend keeping documents that support whether amounts received or paid were arm's length in nature or, if not arm's length, that such amounts were reasonable. These records will form the supporting documentation needed to claim the benefits, wage subsidies, and any tax losses. *As it is not clear what documentation will be required, we recommend keeping all documentation, including any notes from meetings where financial decisions were being made.*



## Wage Subsidies

**Canada Emergency Wage Subsidy (75%) (CEWS)** — Available to individuals, taxable corporations, partnerships, not-for-profits, and registered charities. It pays for 75% of the eligible remuneration (or baseline remuneration) of employees for periods between March 15, 2020 and June 6, 2020, up to a maximum of \$847 per week for each employee. “Paid” to employers as an overpayment of income tax, therefore refunded or netted against outstanding tax debt. Benefits from the TWS or work-sharing EI program will reduce benefits received from the CEWS. For more information, see [here](#).

**CPP and EI Remittance Refund (100%) (part of CEWS)** — Employers who qualify for CEWS may also receive 100% of their employer-portion of CPP and EI remittances back when they apply for CEWS. For more information, see [here](#).

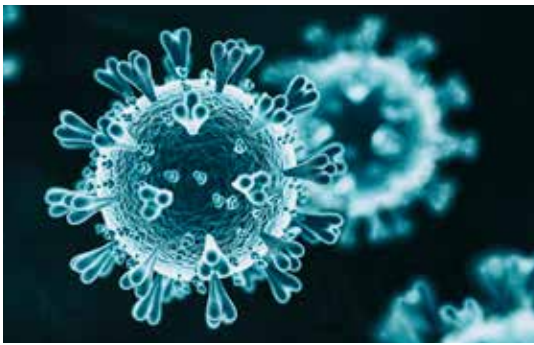
**Temporary Wage Subsidy (10%) (TWS)** — Available to individuals, Canadian-controlled private corporations eligible for the small business deduction, partnerships, not-for-profits, and registered charities. It pays for 10% of eligible remuneration of employees for periods between March 18, 2020 and June 19, 2020, up to a maximum of \$1,375 per employee with an aggregate maximum of \$25,000 per employer. “Paid” to employers as a reduction in remittances. Benefits from the TWS will reduce the CEWS. For more information, see [here](#).

**Canada Summer Jobs Program (100% up to min. wage) (CSJ)** — For any persons hired for summer work under the CSJ program, there is a grant available for hired persons aged 15 to 30 years. Eligible employers are not-for-profits, public sector organizations, and private sector organizations with 50 or fewer full-time employees. It pays up for wages up to the minimum wage in Alberta. For more information, see [here](#).

A detailed summary of the wage subsidies can be found [here](#).

## Additional Programs

**Canada Emergency Response Benefit** — Available to any person who has lost some or all income as a result of COVID-19, including employees, self-employed and caregivers. It is a payment of \$2,000 per month for the period between March 15, 2020 and October 3, 2020. Applications are through the CRA My Account or My Business Account. *Note, if you register for a My Account, the CRA will send you a security code by mail to give you full access. However, you do not need full access to apply for the Canada Emergency Response Benefit. You may apply immediately after registering.* More information can be found [here](#).



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### **Employment Considerations for Employers**

For more detailed explanations, click [here](#).

**Employees requesting leave to quarantine** — Changes to the *Employment Standards Code* now allows full and part-time employees to take 14 days of job-protected leave if they are required to self-isolate, caring for a child or dependent adult that is required to self-isolate. This leave will not require employees to have a medical note or to have worked for an employer for 90 days (does not apply to self-employed individuals or contractors).

**Encouraging Employees to Use Vacation pay, Leave or Banked Overtime** — Employers can request that employees voluntarily take vacation leave and/or use their vacation pay. Alternatively, Employers can require employees to take their vacation time by giving two weeks' notice.

**Advising Employees to Apply for Employment Insurance** — Employees can apply for federal Employment Insurance benefits, which allows up to 15 weeks of assistance if a person cannot work due to medical reasons such as self-isolation or self-quarantine. At present, the government has waived the one-week waiting period for Employment Insurance benefits. It should also be noted that employees that are laid-off can file for employment insurance.

**Work-Sharing program** — Employers may reduce employee hours during slower periods. This is an alternative to lay-offs. The duration is now extended from 38 weeks to 76 weeks and temporary measures have been implemented to “cut the red tape” in this program. For more information, see [here](#).

**Consider the Supplemental Unemployment Benefit Program** — This program allows employers to register Supplemental Unemployment Benefit (SUB) plans, which provide supplemental payments to Employment Insurance benefits during a period of unemployment due to temporary stoppage of work, illness, injury or quarantine. The plan may also provide SUB payments up to a maximum of 95% of the normal weekly earnings when the employee is not in receipt of EI benefits, and is serving the one-week EI waiting period\*, has insufficient hours of insurable employment to qualify for EI benefits, or has exhausted the EI benefit entitlement. For more information on the SUB program click [here](#).



**Temporarily Laying-off Employees** — The *Employment Standards Code* permits employers to temporarily lay off employees so long as the appropriate notice is provided. If an employee is laid off for 120 days in a 120-day period, the employee will be deemed terminated and termination pay will be owing under the *Employment Standards Code*. However, employers have the option to extend such temporary layoffs indefinitely with the agreement by an employee and by continuing to make payments to the employee or continuing to contribute into a benefit on behalf of the employee over the layoff period. To be valid, a temporary layoff notice must: (1) be in writing; (2) state that it is a temporary layoff notice and its effective date; and (3) include the text of sections 62 to 64 of the *Employment Standards Code*. The notice periods for temporary layoffs are: 1 week if the employee has been employed for less than 2 years; and 2 weeks if the employee has been employed by the employer for 2 years or more. However, it should be noted that in the present circumstances notice of layoff may not be required due to the unforeseen circumstances caused by COVID-19.

*(Caveat: There is some risk to temporary layoffs. They are technically not permitted unless it is stipulated in a contract, forms part of the employer's policy, or it is generally known that the employer has a pattern and habit of layoffs. Nevertheless, the risk is mitigated by the fact that we are dealing with exceptional circumstances and practically speaking most employees will prioritize keeping their jobs over claiming a constructive dismissal).*

**Mandating Unpaid Leaves of Absences or Furloughs** — A compulsory leave of absence, without a contractual right to mandate such a leave, may also amount to a constructive dismissal. That is especially so when it is unpaid with no guarantee of eventual employment and is of an indefinite duration.

**Reducing Wage-related Expenses Instead of Terminating or Laying off Employees** — Any reduction in compensation creates a risk of constructive dismissal claims, particularly if over 10% of an employee's total compensation package (e.g., wage reduction; elimination of an RRSP matching program; elimination of incentive pay) is reduced. Across the board reductions of 5% to 10% have been allowed by courts in some cases (although disallowed in others). We often recommend trying to reduce wage costs by reducing overtime or eliminating other expenses arising from an employee's duties (e.g., travel) prior to effecting an across the board compensation decrease.

**We strongly encourage you to consider the information presented and to be proactive at this time to mitigate any potential liabilities or loss that may arise as a result of COVID-19.**



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