

Pivoting After Quarantine: Recalling, Restructuring & Rebuilding

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Presentation Roadmap

- 1) Legal rights for layoffs
- 2) Recalls and terminations
- 3) Update on government income relief options
- 4) Best practices and strategies to pivot your workforce post COVID-19



LAYOFFS

1) The Right to Lay-Off:

- The Employment Standards Act and the right to layoff
- The Employment Contract
- The Collective Agreement
- “Illegal Layoffs”
- Communicating with Employees While on Layoff
- Constructive Dismissal Claims
- Frustration of Contract

COVID-19

Provincial Government Requirements around Layoffs (Ontario)

- 13-wks in a 20-wk period, or less than 35wks in a 52-wk period
- Longer than this = Termination
- How to get to the 35 weeks in a 52-week period?



- Substantial Payments
- Payments to retirement or pension plan or group or employee insurance plan
- Supplementary unemployment benefits (SUBP) (except if on CERB)
- Employee is employed elsewhere and would otherwise be entitled to supplementary unemployment benefits
- Recalled within time approved by Director of Employment Standards
- Recalled within time agreed upon in agreement

2) Recalls and Terminations



- **When a Layoff Becomes a Termination**
 - Notice entitlements
- **Termination while on Layoff**
 - Notice entitlements
- **Recalling Employees**
 - Who to Recall First
 - When to Recall
 - Multiple Recalls

3) Update on Government Relief Options



Support for Employers

- Work Share Program
- Canada Emergency Wage Subsidy (CEWS)
- Workers Compensation (WSIB)
- Canada Emergency Business Account (CEBA)
- Deferred Tax Payments
- Canada Emergency Rental Assistance (CECRA)

Work Share Program

What is it?

- A. Program to help avoid temporary layoffs and reduction in workforce
- B. Available to both provincially and federally-regulated employers
- C. Work sharing unit must reduce its hours of work by at least 10% (one half day) to 60% (3 days)
- D. Reduction of work can vary from week to week, as long as average reduction over course of agreement is from 10%-60%
- E. Sharing of available work
- F. Both employer and employee must agree

Min. 6 weeks to 76 weeks (normally up to 38 weeks)

Canada Emergency Wage Subsidy (CEWS)

- 75% wage subsidy to eligible employers for up to 12 weeks
- Retroactive to March 15, 2020
- Eligible employers include:
 - Individuals
 - Taxable Corporations
 - Partnerships consisting of eligible employers, non-profit organizations and registered charities
 - Those that see a drop of at least 15% of their revenue in March 2020 and 30% for the following months
- Employers are expected to make their best effort to top-up employees' salaries to bring them to pre-crisis levels
- Extended to August 29

Canada Emergency Wage Subsidy (CEWS)

- **Eligibility Periods:**
 - March 15 - April 11
 - April 12 - May 9
 - May 10 - June 6
- **Penalties**



Canada Emergency Business Account (CEBA)

- \$40,000 in interest-free government-guaranteed loans
- For businesses that had payrolls last year between \$20,000 and \$1.5 million
- If the loan is repaid by December 31, 2022, 25% (up to \$10,000) will be forgiven

Deferred Tax Payments

- **Payment of income tax deferred until after August 31, 2020 for business**
- **For payment of income tax amounts owing on or after March 18 and before September 2020**
- **No interest or penalties will accumulate on these amounts during this period**

Canada Emergency Commercial Rental Assistance (CECRA)

- Loans to commercial property owners
- To lower or forgo rent of small businesses from April to June 2020
- Qualification requirements
- Application to open end of May

Government Relief Options

Support for Employees

- Infectious Disease Emergency Leave
- Canada Emergency Response Benefit



Infectious Disease Emergency Leave

- Unpaid leave for employees
- Protected from termination and layoff
- Eligibility: employees can't come to work because:
 - they are sick
 - they are in quarantine (including self-quarantine)
 - schools are closed and they have to take care of their kids
 - they are stuck in another country due to travel restrictions
 - they need to care for someone who is sick
- No requirement to provide doctor's note

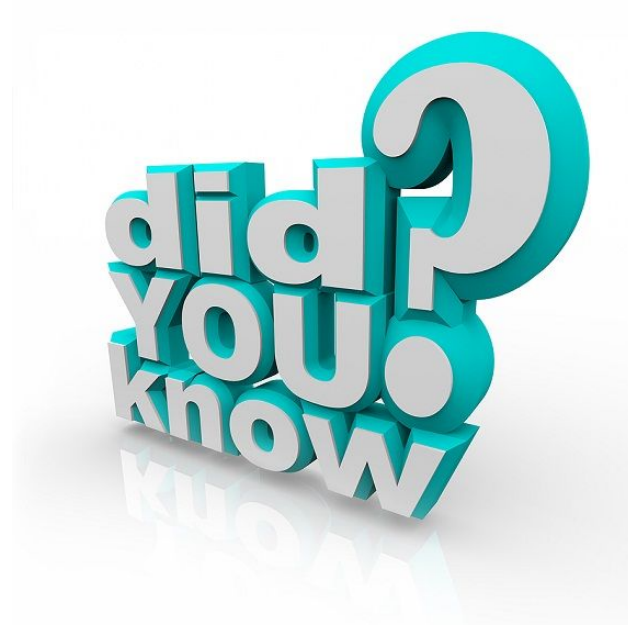
The Canada Emergency Response Benefit (CERB)

Benefit of \$500/week for 16 weeks is available to workers:

- Residing in Canada, who are at least 15 years old;
- Who have stopped working because of reasons related to COVID-19 or are eligible for Employment insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020
- Who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and,
- Who have not quit their job voluntarily
- No more than \$1,000 in employment and/or self-employment income for 14 or more consecutive days within the four-week benefit period of your claim

CERB

- The \$1,000 monthly limit
- Topping up the CERB
- No SUB Plan



4) Pivoting Your Workforce

- **Reduction Options**
 - Reducing Hours
 - Reducing Pay
 - Benefits
 - Some layoffs/terminations
 - Independent contractor roles?
- **Reopening**
 - Health and Safety Concerns
 - The Right to Refuse Work - “danger” and not “risk”
 - Risks of Liability
 - Workers Compensation



Reopening for Business

- Failure to comply with a closure order - penalty
- Making a plan
 - Who will design and implement the plan
 - Assessing the workplace
 - Return to work plan
 - Plan implementation (review government and public health guidance)
 - Monitoring compliance
 - Responding to issues as they arise/adapting the plan as necessary
- Sector-specific safety guide
<https://www.ontario.ca/page/resources-prevent-covid-19-workplace>



Questions?

To learn more about our team: <https://springlaw.ca/team/>

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