

COVID-19 and Labour Law: Canada

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Abstract

Canadian governments have responded to COVID-19 in a number of ways. The federal government has responded primarily in the form of a massive stimulus package that includes: (1) the *Canadian Emergency Response Benefit*, which provides \$500 per week to qualified workers who lose income due to COVID-19; and (2) the *Canadian Emergency Wage Subsidy* program, which covers up to 75 percent of wages for eligible private sector employers. The provinces have responded principally by introducing extended job protected leave entitlements to protect the jobs of employees forced to stop working due to COVID-19 related reasons.

Keywords: Covid-19; Employment Law; Income support; leaves of absence; Canadian Emergency Response Benefit (CERB); Canadian Emergency Wage Subsidy (CEWS).

1. General Framework.

Canada experienced its first COVID-19 related death on March 9, 2020 and by March 11 more than 100 cases had been confirmed. However, for most Canadians, the threat became visible when on March 12, Prime Minister Trudeau went into self-isolation after his spouse tested positive for the virus. That same day, federal officials announced that between 30-70% of Canadians could become infected depending on how the country responded¹. By March 13, schools were closed, large public gatherings had been suspended, an advisory had been issued for Canadians to avoid all non-essential travel outside of Canada, and the first province, Quebec, had declared a state of emergency. Most other Canadian provinces had declared states of emergencies by March 18, activating powers to regulate social distancing and to close non-essential businesses, among other powers.

The Canadian border was closed to all non-essential travel by March 20 and within days non-essential businesses had been ordered to close. By the end of March, the provinces had introduced social distancing rules, sometimes first as recommendations and later as orders subject to sanctions². On March 26, the federal government invoked the little used *Quarantine Act* to order people returning to Canada to self-isolate for 14 days. Over 1 million jobs were

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¹ <https://www.theglobeandmail.com/canada/article-between-30-and-70-per-cent-of-canadians-could-be-infected-with/>

² Provinces listed essential businesses. For example, see Ontario's list of essential businesses here: <https://www.ontario.ca/page/list-essential-workplaces>

lost in March and the unemployment rate increased by 2.2% to 7.8%³. As of April 20, there had been 35,383 confirmed cases in Canada and 1,611 deaths from the COVID-19 virus⁴.

2. Regulatory Interventions to Support Affected Businesses and Workers.

In Canada, the Constitutional division of powers is such that cooperation was required in the public response to COVID-19. Jurisdiction over employment relations falls primarily within provincial jurisdiction with the result that approximately 92% of Canadian employees are governed by provincial labour standards, collective bargaining laws, and health and safety legislation. The federal government has jurisdiction over employment relations relating to the small percentage of workplaces falling within federal jurisdiction, and importantly, over unemployment insurance, including insurance covering extended sick leaves.

The federal government's response has been primarily in the form of a huge stimulus package to support employers and provide money to workers who have suffered a loss of income due to COVID-19. The package costs in the range of CDN\$82 billion dollars⁵. The flagship program to assist workers was announced on March 18 and is called the *Canadian Emergency Response Benefit* (CERB). CERB provides payments of \$500 per week for up to 16 weeks to Canadian workers who earned at least \$5000 from employment, self-employment, or social benefits in the 12 months prior to their application, earned not more than \$1000 in the 4 week period prior to their application for CERB benefits, and lost income due to COVID-19 related reasons⁶. The CERB benefits were later extended to cover seasonal workers and other unemployed workers who would not otherwise have qualified but who are unable to find work due to the economic shutdown caused by COVID-19⁷. The federal government also provided funding to provinces to enable low wage "essential workers" to receive a wage top-up during COVID-19⁸.

In terms of support for employers, on April 11 the federal government introduced the *Canadian Emergency Wage Subsidy* (CEWS), which funds up to 75% of wages of private sector businesses that have lost 15% of gross revenues in March and 30% of revenues in April and May 2020⁹. The stated goal of CEWS was to encourage employers to retain employees on their payrolls through COVID-19. On April 13, the government announced that foreign

³ <https://www150.statcan.gc.ca/n1/daily-quotidien/200409/dq200409a-eng.htm>

⁴ See <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>

⁵ Summary of federal measures is available here: <https://www.canada.ca/en/department-finance/economic-response-plan.html>.

See also "Government of Canada's Response to COVID-19" <https://www.justice.gc.ca/eng/csj-sjc/covid.html>; See also CBC News, *Trudeau unveils \$82B COVID-19 emergency response package for Canadians business*: <https://www.cbc.ca/news/politics/economic-aid-package-coronavirus-1.5501037>

⁶ For information on the CERB, see: <https://www.canada.ca/en/services/benefits/ei/cerb-application.html>. Other eligibility requirements include that the applicant "reside in Canada", be age 15 or older, and not have quit their job voluntarily.

⁷ There remains criticism that the CERB excludes people in need. See <http://lawofwork.ca/how-the-canada-emergency-response-benefit-is-failing-low-income-precious-workers-and-how-it-can-be-fixed/>

⁸ <https://www.canada.ca/en/department-finance/news/2020/04/expanding-access-to-the-canada-emergency-response-benefit-and-proposing-a-new-wage-boost-for-essential-workers.html>

⁹ See <https://www.canada.ca/en/department-finance/economic-response-plan/wage-subsidy.html>

temporary workers would be permitted to enter Canada but would be required to self-isolate for 14 days, with pay and accommodation provided by their employers¹⁰.

At the provincial level, the response to COVID-19 has focused on extending job-protected statutory leave¹¹. With few exceptions, labour standards statutes protect a very limited (2-3 days per year in most cases) right of employees to take unpaid leave to deal with temporary illness (sick leave) or to care for sick family members (family care leave). By mid to late March, the provinces (and the federal government for federally regulated workers) had introduced Bills that extended the length of job protected leave for workers unable to work for COVID-19 related reasons (including caring for children not in school). These job-protected leave provisions are intended to function in tandem with the federal sources of funding so that Canadian workers unable to work due to COVID-19 have protected jobs to return to, and a source of income in the interim.

Canada does not have works councils or formalized “social dialogue”. Canadian unions have participated primarily by lobbying governments for improved worker protections, especially in the case of health and safety, by providing information, and by supporting the right of their members to refuse unsafe work¹². In some instances, governments have overridden collective agreement provisions without union consent to create greater flexibility for job assignments¹³.

¹⁰ The government provided \$1500 per worker to each employer provided that they enforced the quarantine: <https://www.canada.ca/en/agriculture-agri-food/news/2020/04/keeping-canadians-and-workers-in-the-food-supply-chain-safe.html>

¹¹ A few provincial governments (Nova Scotia, Prince Edward Island,

¹² In a number of instances, unionized “essential” workers (including nurses) have exercised their statutory right to refuse unsafe work, backed by their unions See <https://lfpress.com/news/local-news/covid-19-mask-shortage-leads-to-work-refusals-by-nurses-at-londons-hospitals>

¹³ See e.g. <https://news.ontario.ca/mohltc/en/2020/03/ontario-takes-extraordinary-steps-to-ensure-health-care-resources-are-available-to-contain-covid-19.html>