



## **Navigating the Canada Emergency Response Benefit: Information for Workers**

*The following information applies to non-unionized employees. If you are unionized, work with your union representative. Information is also rapidly changing, so keep checking the Government of Canada [website](#) for updates. This information sheet provides only legal information, not legal advice. If you need legal representation, please contact a lawyer.*

On Wednesday, March 25, 2020, the Federal Government announced a new fund for those affected by COVID-19 called the Canada Emergency Response Benefit (CERB), created under the Canada Emergency Response Benefit Act ([CERB Act, contained in Bill C-13](#)). In response to the pandemic, CERB will provide a taxable \$2,000 per month benefit for a maximum of 16 weeks to a wide range of workers and self-employed people. Although it does not cover all workers affected by COVID-19, there are measures that you can take in some cases to maintain or gain eligibility and still access Employment Insurance (EI) afterwards if you qualify. This information sheet will provide a background to the program and provide information to help navigate access to the CERB benefit.

### **Background**

As the federal government states on its webpage, "[Canada's COVID-19 Economic Response Plan](#)", the CERB will be available to:

- workers who must stop working due to COVID-19 and do not have access to paid leave or other income support.
- workers who are sick, quarantined, or taking care of someone who is sick with COVID-19.
- working parents who must stay home without pay to care for children that are sick or need additional care because of school and daycare closures.
- workers who still have their employment but are not being paid because there is currently not sufficient work and their employer has asked them not to come to work.
- wage earners and self-employed individuals, including contract workers, who would not otherwise be eligible for Employment Insurance.

Starting on April 6th, the application can be accessed using an [online portal](#) through Canada Revenue Agency. You must have (or register for) a My Service Canada or Revenue Canada My Account. Applications can also be made by phone by calling **1-800-959-2019**.



The weekday on which you can apply will depend on your birth month. There will be no in-person applications at Service Canada Centres, since the federal government announced on March 26th that these centres would be closing due to COVID-19 safety concerns.

It will take approximately 3-5 days to receive a direct deposit payment, or 10 days by mail. Once started, payments will be bi-weekly and continue for up to 16 weeks. If you qualify for EI, you will automatically be directed to the application for CERB. If you already made an EI application that is not yet processed, it becomes an application for CERB. No applications for CERB will be allowed after December 2, 2020.

### **Who is eligible for CERB?**

To qualify for CERB, there has to be a connection between your job loss and COVID-19. At the time you apply, you cannot be earning any income and have been unemployed for 14 consecutive days since March 15, 2020. You are not eligible if you quit “voluntarily” (more on this below). Eligibility includes the self-employed and contract workers, who are running their own businesses or treated as independent contractors. You have to be a resident of Canada, at least 15 years old and have earned at least \$5,000 in insurable income (employment, self-employment, EI maternity benefits or EI parental benefits) in the last 12 months. If you are currently receiving any form of EI benefits, you will not be eligible for CERB, but may become eligible if you are no longer receiving EI benefits before October 3, 2020, and are included in the list above. You lose eligibility if you resume employment, but can still claim further CERB benefits until October 3, 2020 if you re-qualify. After your CERB benefits are done, you may still qualify for regular EI benefits or other EI benefits that apply to your case. Find information on those processes [here](#).

### **How does immigration status affect eligibility?**

Workers without immigration status in Canada do not qualify for CERB, despite pressure being put on the federal government. The CERB Act says that all residents of Canada will be able to apply. If you have been laid off and are on a work or study permit that allows you to work, you should apply for CERB. You will need a valid social insurance number. The [Migrant Rights Network](#) has reported that CERB will be available to some migrant workers and students who lost work due to COVID-19 because “resident” includes a temporary resident.

In order to maintain your status as a temporary resident, you have to have a valid work or study permit (or a temporary resident permit if you cannot qualify for the first two). All of these allow or can allow you to work. You can apply for a temporary resident permit if you are about to lose



your status, have no ready option to renew as a worker or student and are unable to leave Canada due to the pandemic. If you do this, it will be important to apply for an open work permit at the same time. If your status is about to expire, you should make an online application to renew your permit as soon as possible, which will give you “implied” status as a temporary resident until you are processed. As it stands, you will not be able to make a visitor visa application from outside Canada, but may be able to extend your status as a visitor if it is about to expire. Since CERB requires that you are able to work and a social insurance number, visitor status means you will not qualify for CERB.

All applications will have to be made online. Losing your status now will make things very difficult. Find more information about how the pandemic is affecting immigration on the [IRCC COVID-19 notice](#). To see the Migrant Rights Network’s call for extending benefits for non-status people in Canada, click [here](#).

### **What proof is needed for CERB?**

The federal government plans to simplify the application process to eliminate the need for medical evidence or evidence from the employer. In the online application, when asked if you are not currently working, you will have to answer “yes”. When asked if you are not working due to COVID-19, you will also have to answer “yes”. These are not necessarily the exact questions, but they will be similar. You will be asked to attest that the information you provide is true by checking a box. There will be a similar process verbally if you apply by telephone.

### **Gather proof in case you need it later**

The application process for CERB is not supposed to require evidence, so you should make the application as soon as you are eligible and it is available. That being said, you should still collect the same evidence you would need for an EI application as soon as possible. That documentation is listed [here](#). After your CERB benefits are finished, you may still be eligible to apply for EI afterwards.

It is also important to collect evidence as a safeguard. It will be easy for anyone to access the CERB benefit since evidence is not required. However there is protection in the CERB Act against claims from those who do not actually qualify and provide false or mistaken information. Under the CERB Act, federal government officers can determine if you received money to which you are not entitled. If they determine that you did, you will be required to return it “as soon as feasible.” This indicates there may be investigations at a later date, which could arise through



conflicting information about your CERB eligibility on tax returns or other documentation about which the federal government later becomes aware.

If you were laid off due to COVID-19, you should have a [Record of Employment](#) (ROE) from your employer, which should state the reason that you are no longer working. It is a legal requirement for your employer to provide you with this.

If you still have your job, are not being paid due to COVID-19, and are expected to return when work resumes (an unpaid leave), you should also receive a ROE. If you are on an unpaid leave, you should have your employer write, sign and date a letter on company letterhead, stating your job title and that you are still employed, but not working due to COVID-19, and are expected to return when work resumes. The Nova Scotia Labour Standards Code already allows unpaid leaves for a state of emergency under the *Health Protection Act*, which is the legislation under which Nova Scotia's state of emergency was declared.

If you are a parent taking care of a sick child or staying home due to school and day care closures, and have no paid leave for this (a major gap in the NS Labour Standards Code), you should have your employer sign and date a letter on company letterhead to confirm this, stating the date the leave began and that you are expected to return when you are no longer required to stay home.

If you are self-employed or an independent contractor, you should have documentation confirming this.

### **What about if you quit due to safety concerns over the spread of COVID-19 at work?**

The CERB Act states that you are not entitled to CERB if you quit “voluntarily”. This is likely a reference to eligibility for regular EI benefits. According to the rules for regular EI benefits, it has to be the employer's decision to end your job or you have to have acceptable reasons for quitting (your detailed version of the facts), which shows that you were forced to quit because your employer's conduct was unlawful in some way. It is up to Service Canada officers to decide if they agree. All employers in Nova Scotia are required to follow conditions for workplaces under any existing order by the province's Chief Medical Officer, Dr. Robert Strang, respecting social distancing and any other measures to control the spread of COVID-19 at the time. Find current orders [here](#). It is unclear whether Service Canada would accept quitting due to COVID-19 safety concerns or if they expect you to go through the process of refusing unsafe work, which may be particularly difficult in present circumstances. That process in Nova Scotia is detailed in the following [fact sheet](#) from the labour law firm Pink Larkin.



Instead of quitting or going through the process of refusing unsafe work, another possibility is to agree with the employer to a layoff, due to COVID-19 safety concerns and unwillingness to work through them. This could make you eligible for CERB if it is accepted that you did not voluntarily quit, which will probably require facts showing the employer was not adequately following COVID-19 safety protocols. In any agreement, the employer will likely have a clause that will waive any future lawsuits over issues arising from the safety concerns. Due to the difficult circumstances under the pandemic, lawsuits of this kind may have a low likelihood of success as long as the employer is trying to follow any existing emergency orders. The agreement should be in writing, signed and dated, on company letterhead and state the job title, the date of the layoff and that it is due to COVID-19 safety concerns.

### **What if you are making a reduced income?**

If you currently have any employment, self employment or employment insurance benefit income, you will not qualify for CERB. This includes income from another job or self-employment. There are many workers who still have their jobs but have significantly reduced hours and are making less than \$2,000 per month. If your employer qualifies for the Canada Emergency Wage Subsidy (CEWS), explained next, this can help sort out what you can do.

### **Canada Emergency Wage Subsidy and the CERB**

On April 1st, Canada announced the Canada Emergency Wage Subsidy (CEWS) for businesses and non-profit organizations, but not the public sector. An employer who lost 30% or more of their revenues (or similar measure of lost activity for a non-profit) from March 15, 2020 - June 6, 2020 (12 weeks) compared to the same periods last year will be able to qualify for a 75% wage subsidy, retroactive to March 15, 2020. Your employer would be responsible for the remaining 25% of wages. The amount of wage subsidy can cover up to \$874 per week. The application process will be available for this in approximately end of April to mid-May according to Finance Minister Bill Morneau.

If you are currently making no money due to being laid off or on an unpaid leave, you are already eligible for CERB and can apply as soon as April 6.

But there is another possibility. You can contact your employer to inquire about the CEWS if you lost hours or were laid off. You may be able to get your employer to hire you back or boost hours immediately if they are confident that they qualify. Since they will get a retroactive wage subsidy dated to March 15, 2020 if they hire you back or boost your hours back to normal levels, they may have incentive to do this in order to recover production. With the 75% wage subsidy



(up to \$875 per week) and the employer required to pay the additional 25%, many workers will be substantially better off with this arrangement than CERB, with the added advantage that it will keep you employed. However, due to the waiting period for the CEWS, many employers could hold off on bringing up your hours or hiring you back until they are approved. In the meantime, if you have no income, you can still apply for CERB so you can get money sooner.

If your employer does not qualify for the CEWS, they will still be able to put you on an unpaid leave from work due to COVID-19. This would make you eligible for CERB. The federal government has confirmed that an employer may put you on an unpaid leave (“furlough”), which allows you to qualify for CERB. On their [webpage](#) for the CEWS (the section on the interaction between the CERB and CEWS), they stated, “Employers who are not eligible for the Canada Emergency Wage Subsidy would still be able to furlough employees who will receive up to \$2,000 a month.” Rather than wait for your employer to make any decision about this, you can ask your employer to make an agreement with you for an unpaid leave. In any agreement, the employer will likely have a clause that will waive any future lawsuits over issues arising from the loss of hours. If the employer does agree to the unpaid leave, the agreement should be in writing, signed and dated, on company letterhead and state the job title, that the leave is due to COVID-19 and that you are returning when work resumes).

### **Everything is changing fast, so keep up to date**

Governments across Canada are operating very quickly, with new laws and rules and changes to them being made almost daily. It is important to keep up to date by checking the [federal](#) and the [Nova Scotia government's](#) website for any updates.

If you are an employee and need assistance with an employment matter, you can contact the Workers Action Centre to be scheduled into the next phone clinic by calling the intake line at (902) 221-0755. In-person clinics are not being held during the state of emergency.