

Canada Emergency Response Benefit

Eligibility Issues and Solutions as of April 3, 2020

A Memorandum to the Prime Minister's Office
and the Privy Council Office

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Parliament has been recalled and will be sitting next week¹ to pass legislation to enact the Canadian Emergency Wage Subsidy. This provides an opportunity to amend the legislation that enacted the Canada Emergency Response Benefit, Bill C-13, and adjust the regulations.

Over the past few days, the publication of CERB rules for eligibility seem misaligned with public statements of the Prime Minister and other cabinet members regarding the only priority right now: Provide supports so the maximum number of workers stay home, if sick or non-essential to the workforce, during the period in which we are trying to reduce the infection rate of COVID-19.

We are alarmed by the significant gaps in coverage that the current rules for CERB imply for some of our most vulnerable neighbours, including but not limited to:

- People who have lost most, but not all, their income (this would be a significant share of over two million Canadians who are temporary employees – and almost one-third of all young workers – as well as a significant share of the two million self-employed with no paid help, like gig workers, some of whom are providing essential services)
- One million jobholders who had multiple employers but have lost jobs/hours. Despite sharp drops in earned income, they are neither eligible for a wage subsidy nor CERB. Multiple jobholding is most prevalent among women, in the caring sector (health care, elder care, child care) as well as among cleaners.
- Approximately half a million current EI recipients, possibly more, who will exhaust their benefits but not, according to Bill C-13, be eligible for CERB if they cannot find work by October 3, 2020 because they ceased working before COVID-19/March 15, 2020.
- 390,000 current EI recipients who will be getting less than \$500 because their claim was established prior to March 15, 2020.
- Over two million post-secondary students and two million high school students who will be entering a job market that has vaporized. Some will be able to turn to parents and family, however many will see no incomes but continued expenses for shelter and food.

It is critical that, when CERB's CRA portal is opened on Monday, April 6, 2020 the millions of Canadians who find themselves ineligible for help know their government has seen the gaps and is acting fast to close them. Without such communication, followed up by quick action to prevent financial distress for a huge number of households, the trust that the Prime Minister and all of cabinet has cultivated and built so carefully for weeks will be lost. Without confidence that the Government of Canada has *everyone's* back, particularly those hardest hit, people left economically stranded will do what they can to fend for themselves, including scrambling to earn whatever they can. This defeats the Stay Home mission that must be Job 1 right now.

The Prime Minister has said repeatedly that the Government of Canada will do “whatever it takes” to achieve the goal of helping people stay home and stay afloat during this period. The misalignment between this singular goal and what we have seen thus far leads us to suggest the following four amendments to Bill C-13:

1. Amend s.6(1)(a) from “the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days” to “the worker, whether employed or self-employed, ceases work or is unable to work for reasons related to COVID-19, and has total earned income below \$1,000ⁱ¹] over 14 consecutive days” within the four-week period for which they are applying. Specify this includes people who can show an upcoming contract was abrogated, i.e. prospective, not just past, income.
2. Amend s.6(1)(b) from “they do not receive, in respect of the consecutive days on which they have ceased working,(i) subject to the regulations, income from employment or self-employment,” to read “they do not receive, during the 14 consecutive days,(i) total income from employment or self-employment of more than \$1,000 from employment” etc [as is for (ii) (iii), but add]

- (c) they do not receive, in that 4 week period,
 - (i) self-employment income greater than \$1,000
 - (ii) any payment from an employer receiving funds through the Canada Emergency Wage Subsidy
 - (iii) any other income that is prescribed by regulation.

Exclude from such income registered SUB plan employer top-ups to CERB (as they can already with regular EI benefits) and further, allow temporary "COVID" top-ups for employers without registered SUB plans to facilitate an on-going employer-employee relationship.

3. Eliminate s 6(2) or add a clause that permits a worker to voluntarily cease working with cause (their working conditions endanger their health and safety as per EI regulations.) This requires a ruling by provincial/territorial health and safety regulators. *This must be accompanied by federal funding to/bulk purchase for provinces and territories to provide PPE in workplaces and for workers deemed essential, and funding of more regulators to enforce timely compliance with provincial and territorial health and safety/labour standards during the period of COVID-19.*
4. Add s 6(3)(c) specifying regulations are consistently applied for each re-application. Currently CERB regulations say the first application requires 14 consecutive days out of 4 weeks, but re-application for continuing support requires 100% loss of earnings. Adopt the proposed amendment to s. 6(1) "the worker, whether employed or self-employed, ceases work or is unable to work for reasons related to COVID-19, and has total earned income below \$1,000^[iii] over 14 consecutive days" for the application and each re-application.

We also urge four regulatory changes to provide better coverage and assistance for the most vulnerable workers:

1. Ensure any person currently in receipt of EI benefits who receives less than \$500 a week be scaled up to \$500 a week, as is being done for those who had their case established on March 15 or later. This would apply to those on regular benefits, and sickness benefits (maternity/parental will get the CCB supplement). This is to a) achieve fairness between classes of unemployed and b) acknowledge that the main goal is to keep people home, and many people cannot survive on 55% of their insurable earnings.
2. Include seasonal workers and precarious/temporary workers who might have qualified for EI but cannot now trigger sufficient hours. This also applies to those hoping to accumulate enough hours for parental leave. We hope the legislative amendment proposed above to "ceases working" covers this situation, but recognize EI eligibility post CERB will be impacted because of COVID-19.
3. Re CERB denial: do not use attestation that people "quit" their job as reason for ineligibility.
4. CERB's design does not align with the income eligibility threshold for the Canada Workers Benefit, which starts at \$3000. Really low-income earners are doubly penalized by income loss, with grave material consequences. For example, only half the roughly 300,000 social assistance recipients who also worked earned \$5000 or more last year, but many will lose that income, which covers costs related to disabilities and supplements wholly inadequate income supports to cover their housing costs. If CERB cannot be aligned with CWB, we suggest providing a federal fund for Provinces/Territories conditional on raising social assistance rates or providing refundable credits.

NOTE

This memo was sent to the Prime Minister's Office and the Privy Council Office on Friday, April 3, 2020. It attempted to do three things in 2 pages: 1) encapsulate the problems that were emerging with the design of CERB, at the highest level – one of politics and trust; 2) clarify the technical problems with CERB as currently designed; 3) provide fixes for each of these problems.

Its goal was to provide ways to expand coverage and protection to income supports available under CERB, which on that date provided \$2000 a month, for up to 4 months, in emergency income support to those who lose their jobs between March 15, 2020 and October 3, 2020.

It follows a [brief](#) submitted to the Prime Minister, Deputy Prime Minister and Minister of Finance to support the Government of Canada's rapidly evolving response to COVID-19's economic implications on March 18, 2020.

Jennifer Robson and I also published a [four-pronged approach](#) on March 13, 2020 suggesting how to protect Canadians from the economic storm that COVID-19 is about to unleash.

Before COVID-19 struck, 61% of all Canadians who reported they are unemployed didn't receive any regular UI benefits – 55% of all unemployed men and 68% of all unemployed women at last count (in December 2019). CERB covers a vast number of these people, but significant gaps remain:

- People who have lost significant hours of work, but still have some paid work (the current rule is \$0 in earnings for 14 consecutive days in the first four week period of application, and \$0 for the full four week period in the subsequent months of application)
- People who did not have work on March 15, 2020 and did not lose their job for reasons related to COVID-19. This includes people who were already in receipt of EI (and likely to exhaust benefits soon); seasonal workers whose "season" was cancelled; and students.
- People who had earnings, but less than \$5,000 in the past 12 months.

While I am responsible for drafting this two-pager, it was prepared in consultation with colleagues and subject experts to ensure the solutions were feasible and able to be implemented quickly, to prevent the economy from cratering by providing shelter from the economic storm unleashed by COVID-19 for everyone, particularly the most vulnerable. My colleagues include: Jennifer Robson, Laurell Ritchie, Angella MacEwen and John Stapleton.

Any errors in boiling things down remain mine, with sincere apologies. None of us are lawyers or have experience drafting laws, but we did our best to point directly to the problems and offer solutions.

We all thank the politicians and public servants who are working tirelessly and with enormous focus amidst in this rapidly changing story.

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- i While imminent, as of time of posting on April 7, no official date to recall Parliament had been announced.
 - ii We have since reduced this threshold to \$500.