

A panel of experts answered questions online to guide you in implementing solutions to deal with the COVID-19 crisis in your company.

Ask a panel of experts questions. They can guide you in implementing solutions to address the COVID-19 crisis within your company.

<https://www.ccmm.ca/en/advocacy/covid-19/expert-squad/>

*** It is important to note that these questions were submitted to lawyers practicing in Quebec. Therefore, if further information is required, consulting a professional practicing in the jurisdiction in question is recommended.***

QUESTION:

WHAT ARE THE DIFFERENCES BETWEEN ONTARIO AND QUEBEC LAW IN TERMS OF TEMPORARY AND PERMANENT LAYOFFS?

DOES AN EMPLOYEE WHO IS LAID OFF TEMPORARILY CONTINUE TO ACCUMULATE SENIORITY EVEN THOUGH IT MIGHT LEAD TO A PERMANENT LAYOFF? IN QUEBEC? IN ONTARIO?

DO WE OWE COMPENSATION TO EMPLOYEES WHO HAVE BEEN WORKING FOR US FOR LESS THAN TWO WEEKS?

1. What are the differences between Ontario and Quebec law in terms of temporary and permanent layoffs?

In Quebec, no written notice is required for a layoff lasting less than six months. Certain situations, such as the current COVID-19 pandemic, may require an employer to lay off employees in good faith for an undetermined period that is estimated to be less than six months.

The temporary layoff, which must be less than six months long, is a temporary suspension of the work contract by the employer for any reason other than dismissal. This layoff implies that the employee is relieved of his or her obligation to work, but there is an expectation that the employee will return to work at the end of this period. The relationship between the employer and the employee is suspended (and not broken). The employee is dismissed temporarily, and can make use of employment insurance, if he or she is eligible.

Unforeseen circumstances can occur that extend the layoff past six months. In such a situation, the employer is required to pay all indemnity in lieu of notice as set forth in the labour standards once the six-month temporary layoff ends, including all amounts due and all indemnity in lieu of notice as provided for by law. The amount of notice given will be calculated based on the employee's years of service.

In Ontario, no written notice is required for a layoff lasting less than 13 weeks over a period of 20 consecutive weeks. This period may be prolonged in certain situations, and it could be helpful to consult a lawyer practicing in the jurisdiction in question. At the end of this period, if the employee is still not called back to work, severance will need to be paid. The amount of notice given will be calculated based on the employee's years of service

*** Il est important de noter que la question du licenciement collectif n'a pas été abordée, lequel est régi par des règles différentes au Québec et en Ontario. ***

2. Does an employee who is laid off temporarily continue to accumulate seniority even though it might lead to a permanent layoff? In Quebec? In Ontario?

Yes. A “temporary layoff” temporarily suspends the contract between the employer and the employee. The employee retains his or her employment during the layoff and the contractual relationship is maintained.

3. Do we owe compensation to employees who have been working for us for less than two weeks?

For employment contracts of an indefinite duration, in accordance with the Act respecting labour standards (Quebec), an employee who has been working continuously for less than three months does not have the right to any indemnity or notice.

However, any employee who believes they have the right to indemnity or more notice may pursue legal recourse in accordance with the Civil Code of Québec.

***For the purposes of this question, the issue of fixed-term contracts has not been discussed. The law governing these contracts is different. ***

QUESTION:

QUESTION REGARDING OUR SERVICE CONTRACT. IN TERMS OF NON-REFUNDABLE DEPOSITS ETC., IS OUR CONTRACT IRONCLAD?

It is impossible to determine whether a contract is “ironclad” without analyzing the contract first. It could be helpful to consult a lawyer in case of a dispute.

That being said, in a situation where one party to a service contract requests that it be cancelled, having already paid a non-refundable deposit, the courts will not automatically apply this clause. Certain circumstances, such as an event that constitutes a force majeure or the nature of the contract (consumer or adhesion contract, for example), could be valid reasons for the deposit to be reimbursed

In order to analyze this, a complete study of the agreement and the circumstances surrounding its conclusion is required in order to determine which party must absorb the risk associated with the occurrence of a force majeure event.

*** This answer does not constitute a legal opinion. For more information on your organization’s particular situation, we invite you to consult a lawyer, who will be able to shed light on the contract in question. ***

QUESTION:

OUR INTERNATIONAL PROJECTS AND TRIPS ARE ON HOLD OR POSTPONED UNTIL THE FALL. WHAT PROGRAM CAN HELP US OFFSET THE LOSSES FOR THE FIRM AND FOR CONSULTANTS WHO ARE SELF-EMPLOYED?

With respect to the government’s announcement regarding the creation of a business credit program, I refer you to the Business Credit Availability Program (BCAP) (see BCAP program below).

We recommend that companies contact their bank first to review their financial situation. Financial institutions will refer clients whose needs exceed the resources available in the private sector to Export Development Canada (EDC) and the Business Development Bank of Canada (BDC).

The BDC recently issued a press release on additional measures to help Canadian entrepreneurs here (https://www.bdc.ca/en/about/mediaroom/news_releases/pages/bdc-announces-additional-measures-provide-relief-canadian-entrepreneurs.aspx).

Under the BCAP (https://www.edc.ca/en/campaign/bcap-guarantee.html?utm_source=partner-channel&utm_medium=partner-referral&utm_campaign=crvs_bcap&utm_content=link_bcap-update-email_mar-20_f), EDC provides a guarantee to your financial institution on your operating line of credit or one-year term loan. This guarantee provides emergency cash flow to Canadian companies adversely affected by the COVID-19 crisis, allowing them to pay their employees and cover short-term operating costs. Here are the main features of this new program:

- A program based on the same principles as the Export Guarantee Program, but with a greater appetite for risk and targeted at SMEs.
- A 75% guarantee given to your financial institution on the underlying credit facility.
- A maximum term of one year on an operating line of credit or a cash flow term loan of Can\$5 million or less.
- A streamlined process based on the underwriting and due diligence processes of EDC-approved partner financial institutions to ensure SMEs have quick access to working capital.
- The ability to defer payment of guarantee fees (payable to EDC) by six months.

** Your financial institution will be able to tell you more in the coming days.

Here are the available resources:

- Loan guarantee: EDC may issue a guarantee on a line of credit or equipment loan (maximum 7-year amortization). Allows the bank to reduce its risk and thus enhance the financing it can offer. Guarantees 50% to 75% of the financing. Even up to 100% for financing to foreign subsidiaries;
- Insurance: You can insure up to 90% of a foreign account receivable to prevent the risk of non-payment as well as Canadian accounts receivable when foreign accounts are covered.
- Surety bonds: You can get a 100% guarantee on a foreign exchange line of credit, on the issuance of a letter of guarantee by your financial institution, or on a surety bond;
- Export support: For any specific questions related to exports— regulations, contact, customs, taxes, etc.—feel free to contact EDC. If there are specific projects abroad—opening of a foreign subsidiary, plan to set up in a foreign country (e.g. office, factory), acquisition of a foreign company—we also have solutions for this type of project, such as direct financing.
- Insurance covering advance payments (deposit) on equipment purchases: This allows exporting clients (direct or indirect in certain cases) to be covered against the risk of losing their deposit when purchasing equipment abroad that requires advance payment. The bank can be named as the beneficiary, which allows it to make disbursements before the equipment is received in the country.

You can contact EDC at any time if you have any questions.

QUESTION:

WITH THE NEW ORDER ANNOUNCED BY THE PROVINCIAL GOVERNMENT, AND WITH THE TYPE OF BUSINESS WE ARE (TRANSPORTATION SYSTEM MANUFACTURER), DO WE HAVE TO CLOSE DOWN BECAUSE WE ARE NOT CONSIDERED AN ESSENTIAL SERVICE? MANY OF OUR CUSTOMERS WILL NEED OUR SYSTEMS TO MOVE THEIR GOODS.

At first glance, I do not believe that they can be considered essential, given the three-week shut-down period that has been ordered. However, it could be argued that they should be considered essential if shortages of this type of equipment are expected.

QUESTION :

ARE THERE MEASURES TO HELP SMES IN THE EVENTS INDUSTRY WHOSE ACTIVITIES HAVE HAD TO STOP DUE TO THE COVID-19 CRISIS?

There are no specific measures for SMEs in the events industry, but the governments of Quebec and Canada have announced measures to help businesses.

Government of Quebec

The Ministère de l'Économie et de l'Innovation is offering a loan and loan guarantee program of a minimum of \$50,000, in collaboration with Canadian chartered banks and other financial institutions.

The government will ensure that the companies' financial institutions process the files and applications for financing quickly. Quebec's program will tie into the BDC and EDC federal program. Investissement Québec is already analyzing 600 applications. A cause and effect relationship with COVID-19 must be demonstrated, as well as an impact on financial viability

Link: <https://www.investquebec.com/quebec/en/financial-products/all-our-solutions/Concerted-temporary-action-program-for-businesses.html>

Furthermore, the payment of tax instalments and taxes that would normally be due is suspended until September 1. Companies will have a reasonable period of time to pay the amounts due.

The government has also established a temporary aid for workers program offering financial assistance to meet the needs of workers who are unable to earn their usual income due to self-isolation in the fight against the spread of the COVID-19 virus and are not eligible for other financial assistance programs. The program is being offered by the Government of Quebec, in partnership with the Red Cross. Eligible people will receive \$573 per week for a period of 14 days of isolation. If their state of health justifies it, the period for which eligible people are covered may be extended to a maximum of 28 days

Link: <https://www.quebec.ca/en/family-and-support-for-individuals/financial-assistance/temporary-aid-for-workers-program/>

Government of Canada

The Government of Canada is also offering help for businesses. The Government of Canada is offering a temporary wage subsidy to eligible small business employers for a period of three months. The subsidy will equal 10% of the salary paid during this period, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer.

Businesses will be able to benefit immediately from this support by reducing their remittances of income tax withheld on their employees' remuneration.

Employers benefiting from this measure will include corporations eligible for the small business deduction, as well as non-profit organizations and charities.

Furthermore, the Canada Revenue Agency will allow all businesses to defer, until after July 31, 2020, the payment of any income tax amounts that become owing on or after today and before August 2020.

The government has also announced the establishment of the Business Credit Availability Program (BCAP) in order to help Canadian companies obtain financing during this period of great uncertainty. The Program will allow the Business Development Bank of Canada (BDC) and Export Development Canada (EDC) to provide more than \$10 billion of additional support, largely targeted to SMEs.

Link: https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html#Ensuring_Businesses_Have

QUESTION :

IS COMPENSATION PROVIDED FOR LOST CONTRACTS DUE TO MANDATES BEING CANCELLED OR IS THERE OTHER COMPENSATION FOR COMPANIES LIKE MINE?

I IMAGINE NOT, BUT MAYBE I MISSED SOMETHING.

THANK YOU FOR YOUR HELP AND FOR THIS INITIATIVE.

At first glance, according to the latest measures announced by the Government of Quebec, that type of aid is not covered per se. The government and organizations helping small businesses will most likely analyze this type of situation on a case by case basis. It is also possible that more measures will be announced over the next few days and weeks. We recommend that you keep all documentation related to these lost mandates so that you are prepared to justify your losses.

QUESTION :

WHERE CAN I GET INFORMATION ON WHAT IS AVAILABLE TO MY COMPANY AS A "COMPANY COMPENSATION" AND WHAT IS AVAILABLE FOR ITS TWO DIRECTORS WHO DO NOT QUALIFY FOR UNEMPLOYMENT INSURANCE?

The following resources should be checked:

- Concerted Temporary Action Program for Businesses (CTAPB)
- Ministère de l'Économie et de l'Innovation
- To make up for cash flow shortages facing businesses due to COVID-19, the provincial government has implemented the CTAPB. You may be eligible.

Eligible businesses, including cooperatives, non-profit organizations and social economy businesses engaged in commercial activities, could benefit from financial support of at least \$50,000 in a loan and loan guarantee to make up for cash flow shortages related to COVID-19 due to:

- a supply problem for raw materials or products;
- the inability to deliver or a reduction in delivery capacity for products and services.

The main terms and processes for receiving this aid are presented on the Investissement Québec website.

Eligible companies that want more information or to avail themselves of this funding can call 1-844-474-6367 or the phone number for their regional office.

Canada Emergency Response Benefit (CERB) – Government of Canada

Government introduces Canada Emergency Response Benefit to help workers and businesses

The CERB would cover Canadians who have lost their job, are sick, quarantined, or taking care of someone who is sick with COVID-19, as well as working parents who must stay home without pay to care for children who are sick or at home because of school and daycare closures. The CERB would apply to wage earners, as well as contract workers and self-employed individuals who would not otherwise be eligible for Employment Insurance (EI).

Canadians who are already receiving EI regular and sickness benefits as of today would continue to receive their benefits and should not apply to the CERB. If their EI benefits end before October 3, 2020, they could apply for the CERB once their EI benefits cease, if they are unable to return to work due to COVID-19. Canadians who have already applied for EI and whose application has not yet been processed would not need to reapply. Canadians who are eligible for EI regular and sickness benefits

would still be able to access their normal EI benefits, if still unemployed, after the 16-week period covered by the CERB.

The government is working to get money into the pockets of Canadians as quickly as possible. The portal for accessing the CERB would be available in early April. EI eligible Canadians who have lost their job can continue to apply for EI here, as can Canadians applying for other EI benefits.

Canadians would begin to receive their CERB payments within 10 days of application. The CERB would be paid every four weeks and be available from March 15, 2020 until October 3, 2020.

QUESTION :

I WOULD LIKE TO KNOW WHETHER THERE ARE GOVERNMENT SUBSIDIES FOR IMPORTING SMES WHO ARE FACING THE COVID-19 CRISIS AS WELL AS SOARING CURRENCIES.

For the moment, there is no financial aid specific to Canadian importers.

However, various measures have been established by different levels of government to help companies retain sufficient liquidity to continue their activities. We invite you to contact Investissement Québec regarding the Concerted temporary action program for businesses in order to verify your eligibility and the loan amount to which you are entitled.

In terms of currency fluctuations, you will need to plan an insurance strategy by subscribing to an insurance policy, having a conservative hedging strategy and choosing strategic Incoterms. In all cases, you must contact your account manager quickly to plan solutions. Your bank can offer you several solutions during this crisis.