

On Thursday, November 19, 2020, Bill C-9 received Royal Assent and became law. The Bill implemented a number of changes, including the following:

1. Changes to the Canada Emergency Wage Subsidy, and
2. Implement the new Canada Emergency Rent Subsidy.

Canada Emergency Wage Subsidy (“CEWS”)

Bill C-9 implemented a number of previously announced changes to the CEWS program, the most significant of which are as follows:

1. Extension of the CEWS program to June 30, 2021.
2. Doubling the base percentage for Period 9 (October 25 to November 21, 2020) from 0.4 to 0.8 times the revenue reduction percentage. The 20% maximum base percentage was also doubled to 40% for this period.
3. Adding one additional qualifying claim period (Period 10) from November 22 to December 19, 2020. The base and top-up percentages for this new period will be identical to Period 9 (see above).
4. Expansion of the baseline remuneration rules to include amounts paid in the 90-day period prior to the commencement of certain leaves of absence for which Employment Insurance benefits were paid (e.g. parental or compassionate care leaves).
5. Extension to the filing deadline for CEWS claims in respect of a particular qualifying period to the later of January 31, 2021, or 180 days after the end of the qualifying period. This means that CEWS claims for Periods 1 through 5 **must be filed no later than January 31, 2021**.
6. Ability to amend elections in respect of certain qualifying periods as long as that amendment is filed before the filing deadline for the first applicable qualifying period to which the election applies.

Canada Emergency Rent Subsidy (“CERS”)

Bill C-9 implements the new CERS program. The CERS is a direct replacement for the Canada Emergency Commercial Rent Assistance (“CECRA”) program. The CECRA program was administered by the Canada Mortgage and Housing Corporation (“CMHC”) and that program came to an end at the end of September 2020. The new CERS program will be administered by the Canada Revenue Agency (“CRA”) and is took effect on September 27, 2020. The CERS program is intended to run through June 30, 2021 but Bill C-9 only contains rules for the first three qualifying periods up to December 19, 2020.

Unlike the CECRA, the CERS will not require any participation by a landlord under a lease and there will not be any requirement for the landlord to forego a minimum of 25% of the monthly rent. CERS payments are made directly to the claimant (e.g. the tenant).

The CERS will be available to a “qualifying renter”. A qualifying renter includes the same eligible entities as are used for purposes of the CEWS. A qualifying renter must also meet one of the following additional conditions:

1. It (or its payroll agent) had a payroll account registered with CRA on March 15, 2020; or
2. It had a business number registered with CRA on September 27, 2020 and it provides records satisfactory to CRA in support of its application.

The CERS will be calculated for each qualifying period. These periods will be identical to the periods used for the CEWS, but only those commencing on or after September 27, 2020. There are three qualifying periods currently applicable to the CERS and they run from September 27, 2020 to December 19, 2020 (see below for details and breakdown of these dates).

In order to be eligible to make a CERS claim, a qualifying renter must demonstrate that it has suffered a reduction in revenue in each qualifying period. The rules for this are identical for the rules used in computing revenue reductions under the CEWS program. The rules are complex and we would refer you to our previous communications regarding the CEWS program and the computation of the revenue reductions for more information.

The CERS amount for each qualifying period will be calculated as a percentage of “qualifying rent expense”. Qualifying rent expense will include most items paid pursuant to a real property lease (including common area costs) with the exception of the following:

1. Sales taxes
2. Damage payments
3. Guarantee or security fees
4. Default payments
5. Interest and penalties on unpaid amounts
6. Fees for discrete items or special services
7. Reconciliation adjustment payments

Qualifying rent expense must be paid pursuant to a written lease agreement with an arm’s length landlord entered into prior to October 9, 2020. Qualifying rent expense cannot exceed \$75,000 in any given qualifying period.

A CERS claim can also be made in respect of a property **owned by the qualifying renter** provided that it is not used primarily as a rental property (unless it is a non-arm’s length tenant who is not themselves using it as a rental property). In this case, the qualifying rent expense will include the following items:

1. Interest paid on any secured loan in respect of the property (e.g. a mortgage), but only to the extent that the loan does not exceed the original cost of the property

2. Insurance premiums paid in respect of the property
3. Property taxes paid in respect of the property

Amounts paid in respect of a property that is a self-contained domestic establishment (i.e. an individual's home) will not be eligible for a CERS claim.

Once a qualifying renter has determined the revenue reduction percentage and the total qualifying rent expense, the base CERS amount will be a percentage of the qualifying rent expense as follows

Revenue decline	Period 1 (September 27 to October 24, 2020)	Period 2 (October 25 to November 21, 2020)	Period 3 (November 22 to December 19, 2020)
70% or more	65%	65%	65%
50% to 69%	40% plus 1.25 times revenue decline in excess of 50%	40% plus 1.25 times revenue decline in excess of 50%	40% plus 1.25 times revenue decline in excess of 50%
0% - 49%	0.8 times revenue decline	0.8 times revenue decline	0.8 times revenue decline

In the event that the qualifying renter is subjected to a public health restriction (e.g. a public health order) resulting in some or all of its activities being restricted for at least one week in a qualifying period, it may be eligible for a top-up CERS amount for that period. In order to qualify for this top-up amount, the revenues from the restricted activity must represent at least 25% of the revenues of the qualifying renter in its prior reference period. If it qualifies, the qualifying renter can claim an additional 25% of its qualifying rent expense for that qualifying period. This top-up amount must be prorated for the number of days in the qualifying period during which the public health restriction applied.

As can be seen from the above, a qualifying renter could recover as much as 90% (i.e. 65% base plus 25% top-up) of its qualifying rent expense through the CERS program.