

## COVID-19 Employer Updates

Updated April 8, 2020

For the latest information on how the federal government is assisting employers, visit <https://www.canada.ca/en/departement-finance/economic-response-plan.html>

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## Canada Emergency Wage Subsidy Update

Updated April 8, 2020

### What It Means for Canadian Employers

To help employers keep and return workers to their payroll through the challenges posed by the COVID-19 pandemic, the Prime Minister, Justin Trudeau, announced the new Canada Emergency Wage Subsidy on March 27, 2020. This would provide a 75-per-cent wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020.

### Eligible Employers

Eligible employers would include individuals, taxable corporations, partnerships consisting of eligible employers, non-profit organizations and registered charities. Public bodies would not be eligible for this subsidy.

This subsidy would be available to eligible employers that see a drop of at least **15 per cent of their revenue in March 2020 and 30 per cent for the following months** (see *Eligible Periods*). In applying for the subsidy, employers would be required to attest to the decline in revenue.

### Calculating Revenues

An employer's revenue for this purpose would be its revenue in Canada earned from arm's-length sources. Revenue would be calculated using the employer's normal accounting method, and would exclude revenues from extraordinary items and amounts on account of capital.

Today, the government is clarifying that employers would be allowed to calculate their revenues under the accrual method or the cash method, but not a combination of both. Employers would select an accounting method when first applying for the CEWS and would be required to use that method for the entire duration of the program.

**For registered charities and non-profit organizations, the calculation will include most forms of revenue, excluding revenues from non-arm's length persons. These organizations would be allowed to choose whether or not to include revenue from government sources as part of the calculation.** Once chosen, the same approach would have to apply throughout the program period.

### Amount of Subsidy

The subsidy amount for a given employee on eligible remuneration paid for the period between March 15 and June 6, 2020 would be the greater of:

- 75 per cent of the amount of remuneration paid, up to a maximum benefit of \$847 per week; and

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- the amount of remuneration paid, up to a maximum benefit of \$847 per week or 75 per cent of the employee's pre-crisis weekly remuneration, whichever is less.

In effect, employers may be eligible for a subsidy of up to 100 per cent of the first 75 per cent of pre-crisis wages or salaries of existing employees. These employers would be expected where possible to maintain existing employees' pre-crisis employment earnings.

### Refund for Certain Payroll Contributions

Today, the Government is proposing to expand the CEWS by introducing a new **100 per cent refund** for certain **employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan**. This refund would cover **100 per cent of employer-paid contributions for eligible employees** for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees.

### Eligible Periods

Eligibility would generally be determined by the change in an eligible employer's monthly revenues, year-over-year, for the calendar month in which the period began.

Today, the government is announcing that all employers would be allowed to calculate their change in revenue using an alternative benchmark to determine their eligibility. This would provide more flexibility to employers for which the general approach may not be appropriate, including high-growth firms, sectors that faced difficulties in 2019, non-profits and charities, as well as employers established after February 2019. Under this alternative approach, **employers would be allowed to compare their revenue using an average of their revenue earned in January and February 2020. Employers would select the general year-over-year approach or this alternative approach** when first applying for the CEWS and would be required to use the same approach for the entire duration of the program

- The table below outlines each claiming period, the required reduction in revenue and the reference period for eligibility.

### Eligible Periods

	Claiming period	Required reduction in revenue	Reference period for eligibility
<b>Period 1</b>	March 15 to April 11	15%	March 2020 over: <ul style="list-style-type: none"> <li>March 2019 or</li> <li>Average of January and February 2020</li> </ul>
<b>Period 2</b>	April 12 to May 9	30%	April 2020 over: <ul style="list-style-type: none"> <li>April 2019 or</li> <li>Average of January and February 2020</li> </ul>
<b>Period 3</b>	May 10 to June 6	30%	May 2020 over: <ul style="list-style-type: none"> <li>May 2019 or</li> <li>Average of January and February 2020</li> </ul>

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### **Eligible employees**

An eligible employee is an individual who is employed in Canada.

Eligibility for the CEWS of an employee's remuneration, will be limited to employees that have been without remuneration for more than 14 consecutive days in the eligibility period, i.e., from March 15 to April 11, from April 12 to May 9, and from May 10 to June 6.

For more information on the proposal Wage Subsidy, including how to apply, how it would interact with 10 per cent Wage Subsidy, interact with the Work-Sharing Program and more, visit the official website <https://www.canada.ca/en/department-finance/economic-response-plan/wage-subsidy.html>

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### **Employer Health Tax (EHT) Exemption Increase for 2020**

On March 25, 2020, the Ontario government announced it is increasing the Employer Health Tax (EHT) exemption for 2020 from \$490,000 to \$1 million due to the special circumstances caused by the coronavirus (COVID-19) in Ontario.

#### **EHT Exemption Increase Overview**

Retroactive to January 1, 2020, the EHT exemption is increasing from \$490,000 to \$1 million for the 2020 tax year. The EHT exemption will return to \$490,000 on January 1, 2021.

This change will provide quick relief to employers that pay the EHT.

#### **Only the Exemption is Changing**

Only the exemption amount is changing; eligibility for the tax exemption, tax rates and everything else remains the same. For more information on the EHT exemption, visit <https://www.fin.gov.on.ca/en/guides/eh/foremployers.html>

#### **Applying the New Exemption**

If a registered charity already has two or more qualifying charity campuses, it can claim the \$1 million exemption for each qualifying charity campus for the 2020 tax year.

Employers, including associated groups of employers, with total Ontario remuneration over \$5 million are not eligible for the increase exemption, just as they are not eligible for the exemption currently.

#### **Changes to Instalments**

You will begin making your instalment payments after your payroll has exceeded the new \$1 million exemption level.

If your business no longer needs to make instalment payments as a result of the increased exemption amount, you do not need to contact or notify the Ministry of Finance.

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If your business is still required to make EHT instalment payments, you can also benefit from [additional new relief measures](#) announced in the March 2020 Economic and Fiscal Update.

### Filing Requirements for 2020 Tax Year

The annual return form is not changing. Only the amount for the exemption claimed will change.

If you have already filed a final or special return for 2020, the Ministry will be reviewing all 2020 EHT returns that have already been filed and correcting the returns for the new exemption level.

If you have not paid any EHT yet for 2020 and you will not owe any EHT for 2020 because of the new exemption amount (and you are not an associated employer), you do not need to file an EHT return for 2020.

If your business no longer needs to file an EHT return as a result of the increased exemption amount, you do not need to contact or notify the Ministry of Finance.

If your business is still required to file an EHT return, you can also benefit from [additional new relief measures](#) announced in the March 2020 Economic and Fiscal Update.

### Making Changes to your EHT Payments

If you overpay your EHT during the 2020 tax year because of the increased EHT exemption level, you will be able to make adjustments by decreasing an instalment prior to December 2020 or by making a refund claim.

You may also carry forward your payments to the next year. This will be done automatically unless you request a refund by contacting the ministry.

### Additional New Relief Measures

Beginning April 1, 2020, penalties and interest will not apply to Ontario businesses that miss any filing or remittance deadline under select provincial taxes, including EHT. [Learn more](#).

### Audit Activity

The government is also temporarily suspending audit interactions with most Ontario business and representatives for the month of April 2020.

For more information please visit the Ontario Ministry of Finance [website](#).

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## **Canada Emergency Wage Subsidy Facts**

*Updated April 1st 2020*

The proposed wage subsidy of up to 75% will be available to all businesses, including not-for-profit and charities that can prove that their businesses have decreased 30% based on their figures from March, April and May 2019.

Employers must apply monthly.

The Canada Emergency Wage Subsidy would apply at a rate of 75 per cent of the first \$58,700 normally earned by employees – representing a benefit of up to \$847 per week. The program would be in place for a 12-week period, from March 15 to June 6, 2020.

The portal to apply for the subsidy will be available in approximately 3 weeks, through the CRA website.

The subsidy will be paid through the business' CRA account in approximately 3-6 weeks.

Employers should be paying the remaining 25% of an employees' salary. (the govt recognizes if they can't however).

Minister Morneau suggested in the meantime businesses who are still paying their employees to continue to do so. Businesses will get a refund (wage subsidy).

The 10% wage subsidy is still available to employers that meet the eligibility. For further info see the [Temporary Wage Subsidy FAQ](#)

To see the official press release from the government in regards to the proposed Canada Emergency Wage Subsidy click [here](#)

\*It is expected that parliament will be reconvening next week.

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## Canada Emergency Business Account

To ensure that small businesses have access to the capital they need to see them through the current challenges, the Government of Canada is announcing the launch of the new Canada Emergency Business Account, which will be implemented by eligible financial institutions in cooperation with Export Development Canada (EDC).

This \$25 billion program will provide **interest-free loans of up to \$40,000 to small businesses and not-for-profits**, to help cover their operating costs during a period where their revenues have been temporarily reduced, due to the economic impacts of the COVID-19 virus. This will better position them to quickly return to providing services to their communities and creating employment.

Small businesses and not-for-profits should contact their financial institution to apply for these loans.

To qualify, these organizations will need to demonstrate they paid between \$50,000 to \$1 million in total payroll in 2019. Repaying the balance of the loan on or before December 31, 2022 will result in loan forgiveness of 25 percent (up to \$10,000).

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## **WSIB Announcement for Employers**

\$1.9 billion in relief for employers to reduce the financial strain on business brought on by COVID-19. The measure, which will run through the Workplace Safety and Insurance Board (WSIB), will see premium payments deferred for six months for all businesses in the province.

All employers covered by the WSIB's workplace insurance are automatically eligible for the provisions of the relief package and can defer premium reporting and payments until August 31, 2020.

Employers will not be required to opt-in to receive this benefit, it is automatic.

Additionally, the WSIB will cease interest accrual on all outstanding premium payments. They will not charge penalties during this six-month deferral period. There will be no negative consequences for businesses that defer premium reporting and payments. The WSIB will continue to fully cover workers at eligible workplaces.

The deferred premiums will amount to an average of \$1,760 for approximately 275,000 Ontario businesses.

For more information please see the official WSIB [website](#)

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## **Temporary 10% Wage Subsidy**

To support businesses that are facing revenue losses and to help prevent lay-offs, the government is proposing to provide eligible small employers a temporary wage subsidy for a period of three months. The subsidy will be equal to 10% of remuneration paid during that 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.

To be eligible, corporations must have had a payroll account with the Canada Revenue Agency as of March 18, and have had less than \$15-million in taxable capital employed in Canada in 2019.

For detailed information on how to calculate the subsidy and other frequently asked questions, please visit the [CRA website](#).

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## New Job Protected Leave for Ontario

The Ontario Legislature has passed the *Employment Standards Amendment Act (Infectious Disease Emergencies)*, 2020 to provide job-protected leave to employees in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children because of school or day care closures or to care for other relatives.

### Job-protected leave

The act provides job protection for employees unable to work for the following reasons:

- The employee is under medical investigation, supervision or treatment for COVID-19.
- The employee is acting in accordance with an order under the *Health Protection and Promotion Act*.
- The employee is in isolation or quarantine in accordance with public health information or direction.
- The employer directs the employee not to work due to a concern that COVID-19 could be spread in the workplace.
- The employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.
- The employee is prevented from returning to Ontario because of travel restrictions.

An employee will be able to take infectious disease emergency leave to care for the following individuals:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

The act also makes it clear that an employee will not be required to provide a medical note if they need to take the leave. However, the employer may require the employee to provide other

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evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include such requests as a note from the daycare or for evidence that the airline cancelled a flight, but not a medical note.

These measures are retroactive to **January 25, 2020**, the date that the first presumptive COVID-19 case was confirmed in Ontario. They will remain in place until COVID-19 is defeated.

### **Who does this apply to?**

Most employees and employers in Ontario are covered by the provisions in this legislation, whether they work full-time, part-time, are students, temporary help agency assignment employees, or casual workers.

It does not apply to people in sectors that fall under federal jurisdiction, including employees working for banks, airports, inter-provincial and international rail, and federal crown corporations.

### **Helping ensure the health and safety of Ontario workers and workplaces**

Employers and workers in the health sector should be following the Ministry of Health *COVID-19 Guidance for the Health Sector*.

Workers in other settings should be following the Ministry of Health's recommendations on how to protect yourself. For the most up-to-date information on how individuals can protect themselves and what to do if they suspect they may be at risk, please visit [Ontario.ca/coronavirus](https://ontario.ca/coronavirus).

### **Employer Obligations**

Employers are required to report all occupational illnesses, including COVID-19, to the Ministry of Labour, Training and Skills Development in writing within four days. Employers are also required to notify their joint health and safety committee or a health and safety representative and a trade union, if they exist.

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## Special Measures for the Federal Work-Sharing Program

### What is work-sharing?

- Work-sharing is a program designed to help eligible employers avoid layoffs when there is a temporary reduction in the normal level of business activity (that is beyond the control of the employer). The program is available to both federally and provincially regulated employers.
- As a result, Employment Insurance Benefits are provided for eligible employees as income support.
- Affected employees must agree to work a reduced schedule and share available work over a specified period of time.
- Both the employer and the employee must apply to participate in a Work-Sharing program together.

The mandatory waiting period has also been waived so that employers with a recently expired agreement may immediately apply for a new agreement, without waiting between applications.

### How do I know if I am an eligible employer?

To be eligible for a Work-Sharing program, employers must:

- have been in business in Canada year-round for at least two (2) years;
- be a private business, publicly held company or a not-for-profit organization;
- demonstrate that the shortage of work is temporary and beyond their control;
- demonstrate a recent decrease in business activity of approximately 10%; and
- submit and implement a recovery plan designed to return the Work-Sharing individuals to normal working hours by the end of the program.

Employers may not make a Work-Sharing agreement with employees who are:

- seasonal, or students hired for the summer or co-op term;
- hired on a casual or on-call basis; or

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- shareholders of the business, whose shares provide them with significant decision-making power as to the direction of the company.

### **How many hours of an employee's work schedule can be reduced and how long can it last?**

- A reduction between a minimum of 10% (one half day) and a maximum of 50% (3 days).
- In any given week, the work reduction can vary depending on available work, as long as the work reduction on average is between 10%-60% for the duration of the program.
- The program must have a minimum duration of six (6) weeks and as a result of COVID-19, may last up to 76 weeks (normally maximum 38 weeks).

To find out more about work sharing visit the government website [here](#)

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### **What to Think About When Considering Temporary Layoffs**

COVID-19 continues to have an immense impact on Canadian workplaces resulting in uncertain consequences for the workplace. Given the economic challenges that continue to grow, either as a result of voluntary or forced operational shutdowns, many employers are implementing, or at least considering, temporary layoffs. Here are the key legal considerations when dealing with temporary layoffs.

#### **What is a Temporary Layoff?**

- Generally, a layoff is a period when an employer ceases to provide work and (in most cases) compensation to an employee temporarily. Where permitted by relevant employment legislation, the parties treat the employment relationship as ongoing, despite this interruption of work and/or compensation, with the understanding that work and compensation may resume in the future.
- The definition of layoff differs by jurisdiction. In Ontario, a layoff week is a week where the employee earns less than one half of the amount that they would earn at their regular rate in a regular week or their average earnings for the period of 12 consecutive weeks prior to the layoff period.
- According to applicable employment standards legislation, employers may have the obligation to provide notice of the temporary layoff.

#### **How Long can a Temporary Layoff Last?**

- Temporary layoffs are just that – temporary. If they exceed the statutory limit, then an employer will generally be deemed to have terminated an employee's employment unless an exception applies. Key statutory time limits are as follows:
  - In Ontario, temporary layoffs cannot exceed (a) 13 weeks in any period of 20 consecutive weeks, or (b) more than 13 weeks in any period of 20 consecutive weeks but less than 35 weeks in any period of 52 weeks where:
    - the employee continues to receive substantial payments from the employer, or

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- the employer continues to make payments for benefits or a legitimate retirement or pension plan, or
- the employee receives supplementary unemployment benefits, or
- the employee would be entitled to supplementary unemployment benefits but isn't receiving them because they are employed elsewhere, or
- the employer recalls the employee within a time frame approved by the Director of Employment Standards or as set out in an agreement with an employee not represented by a trade union, or where the employee is represented, as set out in an agreement with the trade union.

### **Is Advanced Notice Required before a Temporary Layoff?**

- In Ontario there are no advance statutory notice requirements before an employee can be placed on a temporary layoff.

### **Do Employers Pay Employees while on Temporary Layoff?**

- Subject to an employment agreement, policy or collective agreement that says otherwise, layoff periods are generally unpaid. However, employees may qualify for Employment Insurance under new eligibility criteria implemented by the Federal Government for COVID-19 situations.
- Employees may also, on a voluntary basis, use their vacation time during a period of a temporary layoff to continue to receive pay.

### **Are Employers Required to Continue Benefit or Pension Contributions During a Layoff?**

- This depends on the terms of employment, including applicable employment contracts, collective agreements, employer policies and third-party plans. In most cases though, absent contractual terms to the contrary, employers are not required by statute to continue benefits or pension plan contributions during temporary layoffs.
- In Ontario, the allotted time for a temporary layoff may be extended if the employer makes benefits and pension contributions to the laid-off employees. In Ontario, the employee must agree to these payments in lieu of a firm limit on the length of the layoff.
- Where an employment agreement, workplace policy or collective agreement provides for a greater right to benefit or pension continuance, those contractual terms will prevail.

### **Do Obligations Change Depending on How Many Employees are Temporarily Laid Off?**

- Where an employer lays off multiple employees in a short period of time, the employer should be aware of applicable statutory group/mass termination obligations which in many jurisdictions, also apply to temporary layoffs. In Ontario there are no mass or group termination considerations for temporary layoffs, however, should the layoffs extend beyond the allotted time mass termination entitlements may apply.
- These obligations may include providing written notice of the layoffs to an applicable government authority and to the employees in accordance with applicable employment standards legislation. Further obligations may ensue if the layoffs are considered terminations.

### **What Else Should Employers Know?**

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- These are unprecedented times but based on current projections, related layoffs should be temporary. If an employee is laid off for a period longer than the time permitted by statute for the temporary layoff, the employer may be considered to have terminated the employee's employment and termination obligations, including full severance obligations, will apply.
- Employers are encouraged to provide timely, transparent and ongoing communications to their employees in respect of any temporary layoffs, including with respect to any anticipated recall dates or extensions to the layoff period. To that end, employers will want to ensure that they have up to date contact information for each affected employee so that communications are effective.
- A Record of Employment must be issued for each of the employees that are on a temporary layoff.
- Despite permissive provisions in applicable employment standards legislations, a layoff, even if intended to be temporary, may result in the risk of constructive dismissal claims or grievances where temporary layoffs are not otherwise expressly permitted by contract or collective agreement.

We recognize that change resulting from COVID-19 is happening in real-time. When making decisions to protect your people and your business, we strongly recommend seeking advice of counsel.

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### **UPDATED EMPLOYMENT INSURANCE (EI) SICKNESS**

*Updated March 17, 2020*

Employment Insurance (EI) sickness benefits provide up to 15 weeks of income replacement and is available to eligible claimants who are unable to work because of illness, injury or quarantine, to allow them time to restore their health and return to work. Canadians quarantined can apply for Employment Insurance (EI) sickness benefits.

If you are eligible, visit the [EI sickness benefits](#) page to apply.

Service Canada is ready to support Canadians affected by COVID-19 and placed in quarantine, with the following support actions:

- The one-week waiting period for [EI sickness benefits](#) will be waived for new claimants who are quarantined so they can be paid for the first week of their claim
- Establishing a new dedicated toll-free phone number to support enquiries related to waiving the [EI sickness benefits](#) waiting period
- Priority EI application processing for EI sickness claims for clients under quarantine
- People claiming EI sickness benefits due to quarantine will not have to provide a medical certificate
- People who cannot complete their claim for EI sickness benefits due to quarantine may apply later and have their EI claim backdated to cover the period of delay

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Contact the new dedicated toll-free phone number if you are in quarantine and seeking to waive the one-week [EL sickness benefits](#) waiting period so you can be paid for the first week of your claim:

- Telephone: 1-833-381-2725 (toll-free)
- Teletypewriter (TTY): 1-800-529-3742
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If you are experiencing symptoms such as cough, fever, difficulty breathing or you are in self-isolation or quarantine, do not visit or enter any Service Canada office. As an alternative, you may access our services online or by calling 1 800 O-Canada.

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### **SICK NOTES - AN UPDATE FOR EMPLOYERS**

*Updated March 18, 2020*

The Canadian Medical Association (CMA) is asking employers to discontinue requiring workers to provide sick notes to be allowed time off work amid the COVID-19 coronavirus pandemic.

“Sick notes place an unnecessary burden on the health-care system at a time where we all need to focus on addressing one of the biggest public health challenges of our time.”

The association is also asking everyone to participate in efforts to stop the spread of the virus.

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## **GST/HST Remittance Deferral - extended deadline**

The CRA will allow all businesses to defer, until the end of June 2020, any GST/HST payments or remittances that become owing on or after March 27, 2020, and before June 2020. This means that no interest will apply if your payments or remittances are made by the end of June 2020.

The deadline for businesses to file their returns is unchanged. Those who are able to, should continue to file their GST/HST returns on time reporting their net tax for the reporting period to help facilitate tax compliance and administration. However, recognizing the difficult circumstances faced by businesses, the CRA won't impose penalties where a return is filed late provided that it is filed by June 30th.

For further information on the GST/HST deferral visit the [CRA website](#).