Accident Benefits COVID-19 Edition: IRB vs CERB



Even the world of statutory accident benefits has to deal with novel issues in the time of COVID-19.

Imagine the following scenario: An individual is involved in an automobile accident. They sustain injuries and are unable to return to work. They apply for statutory accident benefits. They are entitled to receive income replacement benefits as long as they suffer a substantial inability to do the essential tasks of their own employment. Fortunately, after six months their medical condition improves to the point that they can return to work. They do so. One month later, Ontario declares a state of emergency due to COVID-19. The claimant's employer shuts down and they find themselves without work. They apply for government assistance under the new Canada Emergency Response Benefit. They also turn back to their accident benefits insurer and ask for their income replacement benefits to be re-instated.

What happens next? Should they get both? I am going to say "no", at least in most cases.

IRB then CERB – one but not both

The Federal government passed the *Canada Emergency Response Benefit Act,* as part of its comprehensive (and still changing) *Covid-19 Emergency Response Act.* The Canada Emergency Response Benefit, also called "CERB", provides a taxable income support payment of $500.00 weekly for individuals for four weeks at a time. It is available from March 15, 2020 to October 3, 2020. Currently, to be eligible for the CERB, an individual must:

- live in Canada and be at least 15 years old
- had income of at least $5,000 in 2019 or in the 12 months prior to the date of their application.
- stopped working **"for reasons related to COVID-19 for at least 14 consecutive days"** COVID-19; and
- have not voluntarily quit their job

In short, if you were working before and you cannot work now because of COVID-19, you should apply for this benefit.

Under Ontario's *Statutory Accident Benefits Schedule,* a claimant is entitled to a non-taxable income replacement benefit of 70% of their gross employment income, up to a maximum of $400.00 weekly. In order to be entitled to income replacement benefits under the *SABS*, a claimant must (generally) be employed at the time of the accident. They also needs to sustain an impairment result from an accident that causes a "substantial inability to perform the essential tasks of that employment."

Let's go back to our example scenario. It is clear the claimant is without income and possibly unemployed. What was the cause? What changed? Was it because of their accident related impairment? Or was it because of the COVID-19 closure? Someone might argue "well it was both!" but that seems to run contrary to the purpose of the CERB.

It is difficult not to be caught up in the unprecedented nature of the current crisis. An employer shuttering their business because of an emergency order is not dissimilar to shuttering their business for lack of revenue. In that case, it is clear that it is not the accident related impairments that caused the claimant's unemployment. Conceptually, the same logic applies to COVID-19 related dismissals and lay offs. It is a difficult position for the claimant to be in but ultimately it is not the result of accident related impairments.

CERB then IRB – Maybe both but for how long?

What happens if the situation is reversed? Our claimant is dismissed from employment and *then* is involved in an automobile accident. Assuming they satisfies the requirement of being employed for 26 of the last 52 weeks, or was receiving benefits under the *Employment Insurance Act* at the time of the accident, they would be eligible for IRBs.

What about the CERB? In the case of a laid off employee who is not on EI, conceivably they may get both. Because of how the CERB works, if the claimant was receiving EI before March 15, 2020, they are not entitled to apply for CERB until their EI runs out. In that case, they may only be eligible for IRBs.

In this situation, the tricky question is going to be deductibility. Someone who qualifies for IRB first and then CERB, could conceivably receive more money than if they were not injured/laid off at all. We can assume that in the coming weeks there will be some wording that impacts eligibility to the CERB in the face of additional collateral benefits. Until we get the full wording of the CERB regulations, we can only speculate as to what that might look like.

The Take-Aways

Each case is going to depend on its unique facts. Claims handlers faced with renewed claims for income replacement benefits should take a hard look at the underlying reasons for the inability to earn an income. The timing of the request, updated medical documentation, the employer's reason for the work stoppage, and the claimant's CERB status will be essential elements needed to properly evaluate the renewed claim.

The alternate case of CERB then IRB should be a rare. Because of the significantly reduced use of automobiles during COVID-19 and social distancing, it would be surprising if a claim like this ever made its way to an adjuster's

desk. However, if it did, a careful review of any amendments and updated regulations to the CERB would be the first place to look. Ultimately, the CERB is a taxable benefit that could be considered similar to benefits under the *Employment Insurance Act* and subject to claw backs by the government.

Additionally, the *Canada Emergency Response Benefit Act* provides for exclusions to CERB eligibility to be included by regulation. In the coming weeks we will likely see amendments to this eligibility criteria. Given that governments of all stripes like to consider themselves the "payer of last resort", it would be unsurprising if other forms of income, including income replacement benefits, might exclude individuals from CERB eligibility.

Until we get a look at updated regulations, much of this is speculation. Until then, there will undoubtedly be more novel questions for people to deal with like, "can we stop using the word unprecedented yet?" and "should I cut my own bangs?".

Stay safe. Wash your hands. Don’t cut your own bangs.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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