

An Option to Assist Employers Increase Employee Earnings While They are Temporarily Unemployed



Employers forced to temporarily lay off employees may wish to provide financial assistance to employees by topping up earnings over Employment Insurance (“EI”) payments.

Supplemental Unemployment Benefit Programs (“SUB plans”) can be entered into with the Government of Canada for this purpose.

Since payments made under a SUB plan are not considered earnings, these payments will not be deducted from an employee’s EI benefits.

To use this option, employers must register the SUB plan with Service Canada before it can be implemented. When a plan is submitted to Service Canada, the officer will review and ensure it complies with the necessary requirements. If needed, officers can help employers develop and revise plans to meet the requirements.

There are a number of requirements for an acceptable SUB plan, including:

- identifying which employees the plan will cover by group or position (not by name);
- including a start and end date;
- covering any period of unemployment because of temporary work stoppage, illness, injury, or quarantine;
- requiring employees to apply for and receive benefits;
 - If an employee is not receiving benefits, they may still be eligible in certain circumstances.
- confirming that the combined amount received from the plan and the employee’s weekly EI benefits is not more than 95 percent of the employee’s normal weekly earnings;
- outlining the method used by the employer to finance the SUB payments, and confirming that payments are financed exclusively by the employer;
- requiring any changes to be made in writing and submitted to Service Canada within 30 days of the change;
- explaining that the employees have no vested rights to these payments other

- than during the applicable period; and
- providing that payments for other guaranteed annual remunerations, deferred remunerations or severance benefits are not affected by these payments.

SUB plans may also specify other conditions imposed by the employer for receipt of the SUB payments. For example, employers can require that employees return to work for a specified period after supplemental employment benefits are paid.

Approval from the Service Canada SUB Program must be received before it is implemented.

Further information on SUB plans is available on the Government of Canada website.

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.

by Megan Kheong and Walter Pavlic, Q.C., MLT Aikins LLP