Fighting Tariffs And Avoiding Layoffs: Supplemental Unemployment Benefit Program

Bottom Line

In light of the uncertainties surrounding the U.S. tariff threats and resulting impacts on Canadian businesses, employers may wish to consider the Employment Insurance Supplementary Unemployment Benefit Program ("SUB Program"). The SUB Program can help employers retain their talented, trained and experienced employees in times of financial hardship. Employers with a registered SUB plan can provide additional financial support to employees during periods of temporary unemployment. The SUB Program allows employees to receive supplementary payments from their employer in addition to EI benefits, without any claw backs.

Basic Requirements

Employers must meet the following requirements in order to utilize the SUB Program:

- the unemployment must be due to a temporary stoppage of work, training, illness, injury or quarantine;
- employees must be in receipt of Employment Insurance (EI) benefits;
- the weekly payment under the SUB plan, in addition to the weekly EI benefit, cannot be more than 95% of the employee's normal weekly earnings;
- top-up payments must be entirely financed by the employer; and
- SUB Plans must be registered with Service Canada and otherwise meet the requirements of subsection 37(2) of the *Employment Insurance Regulations*.

How it Works

Under the SUB Program, employers can pay employees who are temporarily unemployed a supplementary payment. This payment is not considered to be "earnings" under certain sections of the *Employment Insurance Act*. As a result, EI benefits are not clawed back, as they would normally be for EI recipients who have earnings through other sources of income.

Aside from meeting the requirements above, employers have a considerable amount of flexibility in designing their SUB Plan. There is no minimum or maximum duration of a SUB Plan and employers are only required to indicate a start date that falls after receiving approval from Service Canada for the SUB Plan. Employers also have the ability to choose the financing structure and method of top-up payment for their employees, whether it be a percentage of an employee's weekly earnings or a fixed weekly amount. However, SUB payments must be made to the employee periodically and not through lump sum payments.

Once the SUB Plan is terminated, all remaining assets of the plan must revert to the employer, used for payments under the SUB Plan, or used for associated administrative costs.

Employers must provide written notice of any change to the SUB Plan to Service Canada within 30 days.

The SUB Program is available for both non-union and unionized workplaces.

Takeaways

The SUB Program may be a suitable option for employers who are navigating economic uncertainties and temporary reduction in business activity caused by the ever-changing U.S. tariff measures. In particular, the SUB Program can assist employers who have to temporarily reduce workforce by helping them retain their employees. However, given that SUB Plans must be submitted and approved by Service Canada before they are implemented, employers are well advised to plan ahead and discuss with legal counsel whether the SUB Program is a viable option for them.

Employers should be aware that there is also an EI Work-Sharing Program, as we discuss here.

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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