

## COVID-19 & CERB FREQUENTLY ASKED QUESTIONS

(May 6, 2020)

We have compiled some commonly asked questions about the Canada Emergency Response Benefit (CERB). Due to the rapid changes to government benefits, this information may change. Although we will seek to update our resources regularly, we urge you to consult with us ([info@connectingottawa.com](mailto:info@connectingottawa.com)) if you have any specific legal questions about a client's situation, especially their eligibility for the CERB.

We also encourage you to visit the following links for more information on the CERB:

<https://www.canada.ca/en/services/benefits/ei/cerb-application/questions.html>

<https://stepstojustice.ca/legal-topic/employment-and-work/covid-19>

### ONTARIO WORKS (OW) AND ONTARIO DISABILITY SUPPORT PROGRAM (ODSP) TREATMENT OF THE CERB

#### 1. Is the CERB considered income for the purposes of OW or ODSP?

Yes, but only partially. OW and ODSP will let you keep the first \$200 and \$0.50 of every dollar after that from a CERB payment. **However, this only applies to OW recipients who began receiving OW before March 1, 2020, and to all ODSP recipients.** If you qualify for this partial exemption and become ineligible for social assistance, you will continue to receive health benefits and other supports.

If you began receiving OW after March 1, 2020, you are not entitled to a partial exemption. Your full CERB payment will count as income for the purpose of determining eligibility for social assistance.

#### 2. Should I apply for OW if I am not eligible for Employment Insurance (EI) benefits or the CERB?

You can apply for OW or the Ontario Emergency Assistance Program if you are eligible for either of these programs: <https://www.ontario.ca/page/apply-emergency-assistance>.

### EI BENEFITS AND THE CERB

#### 3. What should I do if I applied for EI benefits after March 15, 2020 and still received EI benefits rather than the CERB?

You should not apply for the CERB. However, you can apply for the CERB if your EI benefits run out and you are unable to find a job due to COVID-19.

It is also important to know that your EI benefits will not be topped up to the CERB amount if they are lower than \$500/week.

#### 4. I applied for EI after March 15, 2020 and am receiving the CERB. Should I still complete my EI report as usual?

Yes. You are required to file your biweekly reports if you applied for the CERB through Service Canada.

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**5. I heard that people are eligible for the CERB if their EI benefits run out anytime between December 29, 2019 and October 3, 2020. Does this apply to people whose EI sickness benefits run out between December 29, 2019 and October 3, 2020?**

No. The CERB is available to workers who have run out of EI regular benefits or fishing benefits between December 29, 2019 and October 3, 2020.

This new criterion was included to capture seasonal workers.

**6. Am I eligible for the CERB if I am on maternity/parental benefits?**

You cannot receive maternity or parental benefits at the same time as the CERB. If you cannot return to work due to COVID-19 after your maternity/parental leave, you would be considered to have stopped working due to COVID-19. If you meet the other eligibility requirements you may receive the CERB.

If you are not eligible for EI, you may count maternity and parental benefits towards the \$5000 in employment or self-employment income.

## ELIGIBILITY FOR THE CERB

**7. What are my options if I have been advised by a medical professional to quarantine or self-isolate for 14 days due to COVID-19? Can I apply for the CERB?**

The *Employment Standards Act, 2000* (ESA) was recently amended to include an unpaid, job-protected infectious disease emergency leave (IDEL) for employees who are covered by the ESA. It's important to first confirm that your employment relationship actually falls under the *Employment Standards Act* (ESA). Independent contractors, for example, are not covered by the ESA. This link can help you find out if you are covered by the ESA: <https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>.

You can take IDEL if you were told to quarantine, isolate or take any other control measure related to COVID-19 by a public health official, a health practitioner, Telehealth Ontario, the Government of Canada, a municipal council, or a board of health.

You can also take IDEL if you were directed to self-isolate by your employer due to a concern that you might expose other individuals in the workplace to the virus.

You do not have to provide your employer with a medical note from a nurse or doctor in order to prove your need to quarantine or self-isolate. However, your employer can request a medical note in a return-to-work situation or for accommodation purposes.

You can apply for the CERB if you meet the eligibility criteria, or you can use your paid sick days if you have them. Your employer may also request that you take vacation time as well.

**8. I am a student who lost my job due to COVID-19. However, I don't meet the eligibility criteria for the CERB. What are my options?**

You may be eligible for the new Canada Emergency Student Benefit and other supports from the federal government: <https://www.canada.ca/en/department-finance/news/2020/04/support-for-students-and-recent-graduates-impacted-by-covid-19.html>.

If you are struggling financially, you may also be eligible for help from Ontario Works or the Ontario Emergency Assistance Program.

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**9. Is my employer obligated to participate in the Canada Emergency Wage Subsidy (CEWS) program?**

Canadian employers whose businesses have been affected by COVID-19 may be eligible for a subsidy of 75% of employee wages for up to 12 weeks, retroactive from March 15, 2020 to June 6, 2020. This program enables employers to re-hire workers previously laid-off as a result of COVID-19. The purpose of the CEWS is to help prevent further job losses, and better position employers to resume normal operations following the crisis.

However, an employer must meet certain eligibility criteria in order to be eligible for the CEWS including having experienced an eligible reduction in revenue. They also must have had a CRA payroll account on March 15, 2020.

We encourage employees to discuss the CEWS with their employers, especially if they do not qualify for the CERB. However, your employer is not obligated to participate in this program.

**10. Am I eligible for the CERB if I quit my job to provide childcare or to care for an elderly parent?**

You must have quit your job to care for your children or an elderly parent due to COVID-19. For example: your child's school or daycare closed, or you removed your elderly parent from a long-term care facility, because of COVID-19. You can also apply for the CERB if you are caring for a child or an elderly parent who is sick with COVID-19 (as long as you meet the other eligibility criteria). However, if your child or parent's illness is unrelated to COVID-19, you will not be able to access the CERB.

**11. If I have a compromised immune system, or an underlying health condition, or am elderly, and have stopped working voluntarily because of my health condition, am I eligible for CERB?**

If your employment falls under the *Employment Standards Act*, you may be able to take infectious disease emergency leave on the advice of a health professional. Since this would not count as quitting voluntarily, you can apply for the CERB.

**12. Am I still eligible for the CERB if I lose an expected future job?**

No. According to the eligibility criteria, you must have lost employment income due to COVID-19 because you stopped working, not because you are not going to be able to start a job. The only people who qualify for CERB because they can't find work due to COVID-19 are individuals who use up their EI regular or fishing benefits between December 29, 2019 and October 3, 2020, and still can't find work due to COVID-19.

**13. If I quit my job because I am afraid of contracting COVID-19, am I eligible for the CERB?**

A fear of COVID-19 is not considered to be a sufficient reason to quit your job. The CRA would likely view this as quitting your job voluntarily. As a result, you do not qualify for the CERB.

**14. I have asthma and diabetes and my company has been deemed an essential work place. I don't feel safe working there right now. What are my options?**

You may have a right to refuse unsafe work under the *Occupational Health and Safety Act* if it can be proven that your workplace is unsafe. You need to notify your manager or supervisor of your concerns and give them a chance to respond. If you do not think their response is adequate, then you can file a complaint with the Ministry of Labour.

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Another strategy is to ask your doctor if it is safe for you to return to work. If it's not, you may be able to get a doctor's note stating you cannot attend work due to your health conditions and COVID-19, and be able to access the CERB.

On a related note, you could request an accommodation for your disability and invoke the protection of the *Human Rights Code*. While you may not succeed in being placed on either paid or unpaid leave, which would theoretically qualify you for the CERB, you may be able to negotiate safer working conditions.

**15. I'm an UBER driver who is not receiving any customers. Am I eligible for the CERB?**

Although you may be eligible for the CERB even if you never stopped working and just have decreased earnings, the law technically still says you need to have stopped working due to COVID-19. Also, this is what you will be swearing to when you apply for the CERB. Assuming the government is able to pass new proposed legislation, things should be ok. But if the current legislation does not change, theoretically you could be asked to repay all the CERB money you received back to the government. It is important for you to understand this risk before you apply.

**16. I am confused about the eligibility criteria for the CERB. Am I eligible for the CERB if my hours were reduced but I never stopped working, or do I need to have stopped working entirely in order to apply?**

We understand your confusion. Unfortunately, we are not able to provide you with a clear answer at this time. The current law technically says you need to have stopped working due to COVID-19 in order to be eligible for the CERB. Also, this is what you will be swearing to when you apply for the CERB. However, some government sources, including this [link](#) from the Government of Canada website confirm that you can apply for the CERB if your hours were reduced and you never stopped working. Until the government updates their legislation, there is a risk that a person who never stopped working entirely could be asked to repay the money.

**17. If I have an outstanding balance of income tax debt, or debt with the Family Responsibility Office, will my CERB payment automatically be applied to pay off those debts or will I be able to receive the benefit?**

The CERB is not garnishable to satisfy family support obligations. You will receive the CERB regardless of your debt with the Family Responsibility Office. The same applies for income tax debt.

**18. Can I apply for CERB using an Individual Tax Number or Temporary Tax Number?**

According to the CERB application, you can apply using one of these tax numbers rather than a Social Insurance Number. However, the law says that you must have a valid Social Insurance Number to apply. Therefore, there is a risk that individuals who apply using any other number could eventually owe the benefit back.

**19. I am a self-employed construction worker who is on OW. I am not getting any contracts because of COVID-19. Can I apply for the CERB?**

Unfortunately, you are not eligible for the CERB.

You can apply for the CERB if your EI regular benefits run out between December 29, 2019 and October 3, 2020, and you are were/are unable to find work in the construction industry due to COVID-19. This does not apply to your situation because you are not in receipt of EI regular benefits.

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**20. I earned more than \$5,000 in income from a number of different jobs in 2019 and 2020. What income counts towards the \$5,000 for CERB eligibility?**

According to the Government of Canada: “The \$5,000 includes all employment and self-employment income. This includes among others: tips you have declared as income; non-eligible dividends; honoraria (e.g., nominal amounts paid to emergency service volunteers); and royalties (e.g., paid to artists). If you are not eligible for Employment Insurance, you may also include maternity and parental benefits you received from the Employment Insurance program and/or similar benefits paid in Quebec under the Quebec Parental Insurance Plan.”

When you apply for the CERB, you are attesting that you had at least \$5,000 in employment income in 2019. If you have not reported any income in 2019, or intend not to report any income in 2019, then you need to weigh the risks of your decision. If the information you give the CRA contradicts what you reported or didn't report, you may be asked to repay.

**21. I am a student who received OSAP during the school year. I worked a bit in 2019, but did not earn \$5000 or more. Can I count student loans towards the \$5,000 threshold?**

No. Pensions, student loans and bursaries are not considered employment income for the purpose of qualifying for the CERB.

## OVERPAYMENTS

**22. What are the consequences of applying for CERB and receiving it when you are not eligible?**

The Canada Revenue Agency (CRA) may ask you to repay the money. Until you repay it all, you will have a debt with the CRA. There is also a risk that you will not receive any tax refunds you are entitled to until you have paid back this debt.

**23. How do I return an overpayment of the CERB?**

You must repay the CERB if you no longer meet the eligibility requirements for the 4-week period in question. This could happen if:

- you earned employment or self-employment income earlier than expected
- you applied for the CERB but later realize you're not eligible
- you receive a CERB payment from both Service Canada and the CRA for the same period

All of the information you need about returning an overpayment can be found at this link: <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra/return-payment.html>.

## CERB & IMMIGRATION

**20. Does immigration status impact CERB eligibility?**

CERB eligibility is not based on immigration status. What matters is whether you have a valid SIN. If you are not yet a permanent resident, you will only have a valid SIN if you have a valid work permit. The SIN is valid for the same period of time as the work permit.

**21. Do I qualify for CERB if I have no legal status in Canada?**

Yes, but only if you have a valid work permit and valid SIN. For example, if you made a refugee claim and was rejected but still have a valid work permit and SIN, you may qualify for CERB if you meet the other eligibility criteria.

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**22. Do I qualify for CERB if I have a visitor visa?**

No. Visitors do not have a work permit and thus do not have a valid SIN.

**23. I am an international student. Can I apply for CERB?**

If you meet all eligibility criteria, including having earned over \$5,000 in the past year, you can qualify for CERB if you have a valid work permit and SIN.

**24. I have worked without a work permit. Do I qualify for CERB?**

No. Working without a work permit is working without authorization and a SIN.

**25. Can I qualify for CERB if I was working with a valid work permit but it expired and I am waiting for the new permit to arrive?**

If you applied for your new work permit before the previous one expired, you have what is called "implied status" and have the right to work. However, you no longer have a valid SIN because your work permit has technically expired. As the law is written, you do not qualify for CERB because you do not have a valid SIN. However, new work permits are taking a long time to arrive and it is no longer possible to renew a SIN in person. You may choose to apply for CERB in this situation but we do not know how Revenue Canada will treat individuals with implied status whose SIN is expired. You should be aware that there is a risk Revenue Canada will eventually ask for the CERB payments back.

**26. I am a Canadian citizen or permanent resident who was working abroad and returned to Canada. Do I qualify for CERB?**

No. You have to have been working in Canada.

**27. Does receiving CERB make me ineligible to sponsor a family member?**

No. Receiving social assistance makes someone ineligible to sponsor a family member but receiving CERB does not. Likewise, receiving CERB while being sponsored by a family member is also not a problem.

**28. If I arrived in Canada in 2020 and never worked in Canada, am I eligible for any benefit?**

You could potentially qualify for Ontario Works but you are not eligible for CERB. Although you can use earnings from abroad to potentially be eligible for CERB, you must have been working here in Canada.

**29. I am a privately sponsored refugee whose sponsorship group is unable to support me during my first year in Canada. Am I eligible for CERB?**

You, as a privately sponsored refugee can only apply for CERB if you meet the eligibility requirements, including having stopped working due to COVID-19. This is the same as for anyone else. Privately sponsored refugees are not eligible for CERB just because their sponsorship group stops providing the financial support they are legally obligated to provide. Sponsorship groups make a commitment to Immigration, Refugees and Citizenship Canada (IRCC) that they have the required money at the time they undertake the sponsorship. You should ask someone to contact IRCC on your behalf so that they can investigate and ensure that the sponsorship group supports you as required.