Topping up employee pay during temporary layoffs using a Supplementary Unemployment Benefit Plan (SUB Plan) (Canada)

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In the face of the global COVID-19 pandemic and recent declared states of emergency in several Canadian provinces, employers are faced with the difficult decision of having to temporarily lay-off their employees.

In Ontario, the Employment Standards Act, 2000 provides for temporary lay-off of up to 13 weeks in any 20 week period, and up to 35 weeks in any 52 week period if:

- the employee continues to receive substantial payments from the employer;
- the employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan; or
- the employee receives supplementary unemployment benefits.

Recently, more employers have begun to consider using Supplementary Unemployment Benefit Plans (SUB Plans) to provide financial assistance to their employees during a period of layoff due to temporary stoppage of work,
A SUB Plan can be established by an employer or group of participating employers. Once the SUB Plan is registered with Service Canada, the SUB Plan allows the employer to top up an employees’ employment insurance (EI) benefits during a period of unemployment due to a temporary or indefinite layoff. The amount of the top up can be up to 95% of the employee’s weekly wages/salary, less the amount of the employee’s corresponding EI benefits.

The benefit of using a SUB Plan (as opposed to continuing to make substantial payments to the employee in the ordinary course) is that the payments from a registered SUB Plan are not deducted from the employee’s EI benefits. Further, payments under a registered SUB plan are not considered as insurable earnings; therefore, EI premiums are not deducted. There is no minimum or maximum duration for which payments under a SUB Plan can be made.

More information about SUB Plans is available from the Government of Canada.

When considering whether to lay-off an employee or implement a SUB Plan, employers should first consult with legal counsel.

For further information, please consult our Coronavirus Resource Centre or contact any member of our DLA Piper Canadian Employment and Labour Law Service Group.

This article provides only general information about legal issues and developments, and is not intended to provide specific legal advice. Please see our disclaimer for more details.

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