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The Honourable Carla Qualtrough P.C, M.P.
Minister of Employment, Workforce Development, and Disability Inclusion
Ministry of Employment, Workforce Development, and Disability Inclusion
Government of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Via email: Carla.Qualtrough@parl.gc.ca

Re: EI Consultations – The Canadian Payroll Association’s Risk Brief

Dear Minister Qualtrough,

The Canadian Payroll Association (“Association”) thanks you for the opportunity to provide feedback on Building a Modern Employment Insurance Program through the series of virtual roundtables and written submissions. As the government explores the many facets of the EI system, including the changing nature of work, issues related to access to EI benefits for the self-employed, and overall simplification, discussions during those roundtables have shown that the government needs to ask itself and its stakeholders many questions before committing to changing policies or creating new ones. Through direct feedback during those roundtables and through this risk brief, the Association has identified some of those questions requiring further examination, in an effort to ensure that a reform of the EI system yields simplification and streamlining for employers, claimants, and government.

The Employment Insurance (EI) program provides temporary income support to unemployed Canadians looking for employment and has served as a means for the country to stabilize its economy since 1940. The system was then expanded to include special benefits such as sickness and parental benefits. The EI system’s technology has been in place for 50 years and Service Canada has deemed it to be outdated and unable to sustain further development. As the Government explores expanding benefits to the self-employed and gig workers, it became evident that the 50-year old technology was not going to sustain the changing landscape of work.¹

As the Government of Canada works towards modernizing the EI system, a comprehensive analysis is warranted to ensure that enhancements and expansions to the program do not increase cost and administrative burden for employers, who are responsible for funding 7/12 of EI premiums and for remitting 100% of employee and employer premiums to the federal government.

The Canadian Payroll Association represents employers of all sizes, across a wide variety of industries in all jurisdictions in Canada, and advocates on behalf of payroll professionals to reduce payroll-related administrative burden. In order to mitigate possible risks to employers, employees, and the government, the Association has identified key questions that government should

¹ [Modernizing the Employment Insurance program \(ourcommons.ca\)](https://ourcommons.ca)

consider prior to establishing new EI policies, in response to questions asked during the roundtables, and comments and recommendations made by other stakeholders.

Expanding EI to self-employed and gig workers

The federal government is undertaking public consultations on whether to cover self-employed and gig workers for regular benefits under Canada's EI program. Self-employed workers currently have access to special benefits (for example, parental benefits) if they have entered into an agreement with the Canada Employment Insurance Commission through Service Canada and contribute the equivalent of both employee and employer premiums. The inclusion of this group of workers under regular EI benefits may result in a less equitable system for all the beneficiaries who pay into the system. Without legislative restrictions, such a worker could potentially lay themselves off and receive EI since they are not overseen by an employer, whereas an employee cannot. The nature of self-employment and gig-work allows the worker the ability to choose a contract for work; in turn, it allows them to also decide not to work.

Access to EI benefits has historically been determined based on the information provided by employers on the Record of Employment (ROE), one of the most administratively burdensome forms for employers to complete in its current state. Self-employed and gig workers do not receive an ROE when an interruption of earnings or separation of employment occurs. Relying on a self-employed individual to complete their own ROE-type document or self-report hours worked and wages earned may increase the potential for fraud.

The following questions ought to be asked when considering expanding regular EI benefits to self-employed and gig workers.

- What kind of safeguards will be in place to ensure no misuse of the EI system given the lack of employee-employer relationship, and the worker's ability to choose when they work?
- Will premiums increase for employees and employers to compensate for a larger pool of potentially eligible individuals? How will the annual premium rate be set to take into account this larger pool and this type of eligible worker?
- Will the self-employed and gig workers need an ROE-type form to access EI, and who would be responsible for issuing and verifying the accuracy and legitimacy of the form?

Permanent waiving of the one-week waiting period

Similar to what occurred when the waiting period was reduced from two weeks to one week effective 2017, employers could be required to review and possibly amend their short-term disability (STD) plans in order to maintain eligibility under the EI Premium Reduction Program (PRP). Employers were required to analyze the impact of the one-week waiting period on their policies; obtain advice from their benefits advisors, sponsors, and brokers; decide what changes may be required to their STD plans; underwrite needed changes to their STD plans, rewrite policies, employments contracts, and collective agreements; and communicate changes to their payroll service and software providers, employees, management, and unions. (Amendments to collective agreements are typically cyclical, and contracts are in place for several years before the next round of negotiations.)

In recognition of the requirements above, employers were provided up to four years to make any required changes to their STD plan while maintaining their eligibility under the PRP. If the one-week waiting period were to be eliminated, employers would once again be required to go through all of the same steps, unless the PRP program did not require employers to start benefits from day one of an STD claim.

An elimination of the one-week waiting period may lead employers to reconsider offering a STD plan altogether, resulting in increased usage, and further strain, on the EI program.

Key considerations for the government to consider before eliminating the EI waiting period:

- Will the PRP program maintain the current criteria that the employer's STD plan pay the benefit to employees within 8 days of illness or injury?
- Will employers have the same four years to review their STD plans as they did when the waiting period was reduced from two weeks to one?
- Will this result in increased employee usage and dependency on the EI program?

Extension of EI sickness benefits from 15 to 50 weeks

An additional eligibility criterion under the PRP is that an employer's STD plan must provide at least 15 weeks of benefits. If this requirement is increased, employers will need to go through the same analysis as would be required if eliminating the benefits waiting period (as described in the previous section).

Employer STD plans typically pay 16 weeks of benefits, and then switch over to long-term disability (LTD) coverage. If EI sick benefits are increased to 50 weeks, employers may decide to no longer offer STD or LTD benefits, which would put a further strain on the EI program. The financial strain would also be felt by employees since STD and LTD typically pay considerably more than EI, making EI benefits less advantageous for employees.

Many Canadian employers also offer top-up payments to employees who are in receipt of EI sick benefits to help claimants with the significant decrease in income. An increase in the duration of EI sickness benefits from 15 weeks to 50 weeks could cause employers to reassess their top-up plans to avoid the potential increase of over 330% as the cost of extending the top-up benefit over the full 50 weeks. For employers that offer top-ups on other EI benefits, such as adoption, maternity and parental leave, it is possible that these supplements would also be cancelled for consistency.

Questions to consider include:

- Will employers need to increase their STD plan to the full 50 weeks in order to continue qualifying under the Premium Reduction Program (PRP), or can this criterion remain at 15 weeks?
- Will an increase to EI sick benefits result in increased employee usage and dependency on the EI program?
- Will employees be in an overall disadvantaged financial position if employers reduce or eliminate their top-up plans?

Parental benefits flexibility

The proposed parental benefits flexibility could be interpreted as allowing beneficiaries to sporadically start, stop, and resume their parental leave until their EI benefits are fully used. Having an employee take multiple non-continuous leaves in the same calendar year would increase the administrative burden for employers, and may lead to staffing challenges. Generally, employers recruit for a temporary position to fill the predetermined length of the vacancy. If the claimant can choose to enter in and out of employment at will, employers may be faced with double staffing issues and added costs for having their employee and their temporary replacement on payroll at the same time. Employers and recruiters would be exceedingly challenged to find temporary replacements if these contracts of employment included the

employer's right to stop and restart employment, as dictated by the parent's ability to stop and restart their parental leave.

The Government of Canada should also consider the following when contemplating added flexibility to parental EI benefits:

- Will employers be required to generate a Record of Employment (ROE) for every time an employee wants to restart their parental leave?
- Will an ROE be required for the replacement contract employee when laid off during each period that the regular permanent employee decides to temporarily return to work?
- Will the government explore ways to help employers who are faced with increased difficulty backfilling positions potentially left vacant by an employee coming and going from their leave?
- Will there be a limit to how many times an employee can start, stop, and restart their parental benefits in order to mitigate the above risks?

Ongoing stakeholder consultations

EI reform should be designed to support Canada's economic recovery, and eliminate any unintended consequences of greater financial instability for employers and the government if EI premiums and administrative burden increases following the introduction of enhancements and expansions to the Program. Continued consultations with key stakeholders, including the Canadian Payroll Association, are necessary in order to avoid these unintended consequences of proposed changes.

The Canadian Payroll Association has been representing Canadian employers' payroll interests since 1978. CPA's advocacy and education programs provide the legislative compliance content used in the payroll processing and remitting systems of over 500,000 small, medium and large employers. CPA members include 90 of Canada's top 100 companies and the majority of Canada's payroll service and software providers.

Please do not hesitate to contact me or our Director of Government and Legislative Affairs, Rachel Dobrin-De Grâce at 416.487.3380 x 126 or rachel.degrace@payroll.ca.



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President

cc. Nancy Healey, EI Commissioner, Employers
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