

## MEMORANDUM

DATE: April 13, 2020

TO: Board of Trustees of the UA 46 Supplemental Unemployment Benefit Plan

FROM: Koskie Minsky, LLP

FILE NO: 200458

SUBJECT: Providing Top-Ups to the Canada Emergency Relief Benefit

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This memo provides an update on the possibility of Supplemental Unemployment Benefit Plans ("SUB Plans") providing top-ups for Canada Emergency Response Benefit (CERB) payments.

While such payments are currently prohibited, we expect this may be addressed by the Minister of Employment and Social Development in the coming days or weeks. We expect the Canada Revenue Agency (CRA) will follow suit, but we are still working on confirmation.

### Background

SUB Plans are employee benefit plans that provide top-up payments to supplement unemployment insurance benefits in certain circumstances. They may be registered with Employment and Social Development Canada (ESDC) under the *Employment Insurance Act*, SC 1996, c 23 (EI Act)<sup>1</sup> and/or the Canada Revenue Agency (CRA) under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA).

Bill C-13 introduced the *Canada Emergency Response Benefit Act* (CERBA), under which the CERB is provided. The federal government has announced that for the period of March 15, 2020 to October 3, 2020, CERB payments will be provided to those who would otherwise qualify for unemployment insurance benefits under the EI Act. Understandably, many SUB Plan administrators wish to know whether it is permissible to provide top-up payments for CERB payments at this time.

### Potential Risks

At the moment, there are risks associated with providing top-ups to CERB payments from a SUB Plan.

Registered SUB Plans are only permitted to provide top-up payments to employees who are receiving unemployment benefits under the EI Act or have applied and had their benefits denied

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<sup>1</sup> Registration with the ESDC is conducted through Service Canada.

for very specific reasons.<sup>2</sup> If payments are made from a SUB Plan for purposes other than topping up EI benefits, then the SUB Plan's registration with the ESDC and/or the CRA could be at risk.

In addition, although CERBA does not appear to include a claw back mechanism, the legislation provides the Minister of Employment and Social Development wide scope to deem certain types of income as disqualifying a claimant from eligibility for the CERB. Benefits paid from a group wage loss plan such as a SUB Plan could be deemed as disqualifying.

## **Current Status**

We have been actively involved in conversations with the federal government about permitting SUB Plans to offer top-up payments in respect of CERB payments, during this time of crisis. While we cannot provide any guarantees with respect to this matter, we do expect the ESDC to make an announcement to this effect soon and we expect that CRA will follow suit.

In the meantime, we have been advised by ESDC that Service Canada employees have been directed to collect email addresses from SUB Plan administrators inquiring about CERB top-ups so that Service Canada is able to follow up once they are given a clear directive.

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<sup>2</sup> *Employment Insurance Regulations*, SOR/96-332 (EI Regulations), s 37(2)(c);