



SUPPLEMENTARY UNEMPLOYMENT BENEFIT (SUB) PLANS

The impacts of COVID-19 on Canadian businesses has forced many employers to carry out or consider temporary and permanent layoffs.

Employees who have been laid off can apply for Employment Insurance (EI). They will only receive 55% of their average earnings (capped at \$54, 200) in the year prior to their claim. The maximum weekly benefit is \$573.

Employers can top-up their employees' EI benefits during a period of unemployment due to various reasons including, temporary shortage of work, illness or quarantine, can consider setting up and registering a SUB Plan. Through a SUB Plan, employers can top-up to a **maximum of 95%** of the employee's weekly insurable earnings.

For example :

| | |
|------------------------------------------------|-----------|
| A. Employee's normal weekly earnings | \$ 1, 000 |
| B. 95% of normal weekly earnings | \$ 950 |
| C. Maximum EI payment | \$ 573 |
| D. Maximum SUB payment (B – C) = (1,000 – 573) | \$ 377 |

Advantages of a SUB Plan

Normally, if an employee receives income while on EI, that income will reduce their EI benefit.¹ However, a registered SUB Plan that complies with the *Employment Insurance Regulations* allows employers to top-up EI benefits without affecting how much the employee receives in EI.

The top-up amounts are still considered taxable income for the employee but do not reduce the employee's EI benefits.

Top-up amounts in a registered SUB Plan are tax deductible for the employer.²

If not registered, top-up amounts will be treated as insurable earnings and may be deducted from the employee's EI benefits.

Requirements of a SUB Plan

With some exceptions, employees must be in receipt of EI benefits to qualify to receive top-up payments through a SUB Plan. One such exception is for employees serving the one (1) week waiting period to receive EI.

The EI benefit rate (55% of the employee's weekly earnings) and the weekly top-up amount paid out of a SUB Plan, cannot exceed 95% of the employee's normal weekly earnings.

¹ For information on how working while on EI affects EI benefits : <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/working-while-claim.html>

²<https://www.canada.ca/en/revenue-agency/services/tax/registered-plans-administrators/supplementary-unemployment-benefit-plans.html>

A SUB Plan should be registered with Service Canada and meet the requirements of art. 37(2) the *Employment Insurance Regulations*.³

How to set up and register a SUB Plan

1. Create a plan

There is no specific format for a SUB Plan but all plans must:

- Identify the group of employees covered and the duration of the plan⁴
- Identify the type(s) of unemployment covered by the plan
- State that employees are required to apply for and be in receipt of EI benefits in order to receive payments under the plan
- Indicate that the combined weekly payments from the plan and the portion of the EI weekly benefit rate does not exceed 95% of the employee's normal weekly earnings
- Be entirely financed by the employee
- State that on termination, all remaining assets of the plan will revert to the employer or be used for payments under the plan or for its administrative costs
- State that written notice of any change to the plan be given to Service Canada within 30 days after the effective date of the change
- State that the employees have no vested right to payments under the plan except during a period of unemployment specified in the plan
- State that payments in respect of guaranteed annual remuneration, deferred remuneration or severance pay will not be reduced or increased by payments received under the plan

A sample plan can be found on the Government of Canada's website:

<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/supplemental-unemployment-benefit/sample.html>

2. Submit all documents to Service Canada

The following must be sent to Service Canada :

A copy of the SUB Plan

The SUB Plan Registration form⁵

Any additional documents to Service Canada, including where applicable :

Collective agreement(s), if the plan covers unionized employees;

The trust or other similar agreement in which the amounts to be distributed will be deposited; and

Policies or guidelines that describe the SUB Plan and the documents signed by employees receiving top-up payments through the SUB Plan.

³ <https://laws-lois.justice.gc.ca/eng/regulations/sor-96-332/page-11.html#h-983349>

⁴ SUB Plans can last a minimum of one (1) year and a maximum of five (5) years. If the plan is contained within a collective agreement, it will be valid until the expiry date of the agreement.

⁵ <https://catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=NAS5036>.

Plans and accompanying documents should be sent to the following address by mail :

Service Canada - Supplemental Unemployment Benefit (SUB) Program

120 Harbourview Boulevard

P.O. Box 11,000

Bathurst, New Brunswick

E2A 4T5

A fax number is also provided: (506) 548-7473

3. Await approval from Service Canada

Approval by Service Canada must be received before the implementation date of the SUB Plan.

Employers can make payments once all documents have been sent in, however, top-up payments made before approval risk being considered as “earnings” and lead to the reduction of the employee’s EI benefits.

Although COVID-19 presents exceptional circumstances which may reduce that risk, the requirement that a plan be approved and registered remains intact.

*For more details, please consult the Government of Canada’s guide to applying:

<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/supplemental-unemployment-benefit/requirements.html>