

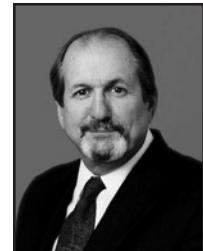
Member's Quarterly

Fall 2017 Edition

Feature

Update on the Wage Earner Protection Program (WEPP)

More employees assisted in face of bankruptcy or receivership



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The Wage Earner Protection Program (WEPP) is a federal program that compensates eligible workers for unpaid wages, vacation, severance and termination pay they are owed when their employer declares bankruptcy or becomes subject to a receivership under the *Bankruptcy and Insolvency Act*. It's been in place in Canada since 2007 and numerous administrative and legislative changes have been made to the program since it first became law. It is administered by Service Canada as part of its federal Labour Program.

According to Philip Gennis, Senior Principal at msi Spergel and an expert in bankruptcy issues, "WEPP was a response by the government to assist employees who suffer income loss in the face of bankruptcy or receivership."

The plan initially allowed individuals who had been employed for more than three months to be eligible to be paid wages owing to them that were earned during the six months immediately prior to a bankruptcy or receivership. The plan started out offering a maximum of \$3,000 or 4 times their maximum weekly insurance earnings under the *Employment Insurance Act*. "Without the protection offered under the Wage Earner Protection Program, individuals would have very little protection, so this was a godsend to workers in bankrupt companies. It helped many of them survive to their next job," said Mr. Gennis.

This afforded the federal government the ability to step into the shoes of the employee and claim against the bankrupt or insolvent employer and its directors to the extent of any such payment. The *Bankruptcy and Insolvency Act* has also been amended to provide employees with security against certain assets of their employers to the extent of \$2000 for wages and vacation pay only.

In 2011, the federal government made a number of administrative changes to the program. They expanded the program to cover employees who lose their jobs when their employer's attempt at restructuring subsequently ends in bankruptcy or receivership. This meant that many more Canadian workers could qualify for WEPP support. They also clarified employee entitlements and what were considered eligible wages under WEPP.

The following amounts are considered eligible wages under the WEPP: Salaries, commissions, compensation for services rendered, vacation pay, gratuities accounted for by the employer, disbursements of a travelling salesperson properly incurred in and about the business of the former employer, production bonuses and shift premiums that were earned during the eligibility period, severance pay and termination pay for employment that ended during the eligibility period.

To recap an employee can apply for the Wage Earner Protection Program if:

- their employment has ended;
- their former employer has filed for bankruptcy or is subject to a receivership;
- they are owed wages, vacation pay, termination or severance pay from the former employer;
- amounts were earned during the eligibility period or, in the case of termination or severance pay, the employment was terminated during the eligibility period ending on the date of bankruptcy or receivership.

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The eligibility of the program is defined as the period in which wages and vacation pay must be earned to be compensated under WEPP and in which the employment must have ended to be eligible for termination and severance pay. It starts six months before a restructuring event and ends on the date of bankruptcy or receivership. Should the employer not have gone through restructuring, the eligibility period is the six-month period ending on the date of bankruptcy or receivership.

There are however some employees who are not eligible for coverage under WEPP. According to Philip Gennis, you are generally not eligible if you fall into one or more of the categories below. They include:

- being an officer or a director of the former employer;
- having a controlling interest in the business of the former employer;
- being a manager whose responsibilities included making binding financial decisions impacting the business of your former employer, and/or making binding decisions on the payment or non payment of wages by your former employer. These people can still be eligible, but have to complete a supplementary form.
- dealing at arm's length with any of these persons.

The allowable payments under WEPP cover eligible wages up to an amount equal to four times the maximum weekly insurable earnings under the Employment Act. As those benefits change, so too do the WEPP payouts. In 2017, the WEPP payments will be \$3,946.16, minus a 'prescribed reduction' of 6.82%.

According to an assessment of WEPP in 2013, annual numbers of applicants for WEPP have been relatively high, reaching over 18,000 in 2009-2010 and nine out of ten WEPP applicants received a payment. It was also found to reach almost all of the intended population and had high participation rates, almost 90% of all eligible workers. While in recent years the number of WEPP applicants has been dropping, partly due to the improving economy, WEPP continues to be an effective tool to help workers facing bankrupt situations. In 2015-2016, over 11,000 workers received payments from this program.

Members Quarterly Staff Writer