

APPLICATION GUIDE FOR THE WAGE EARNER PROTECTION PROGRAM

The Wage Earner Protection Program (WEPP) provides payment to eligible individuals for wages owed to them by employers who are bankrupt or subject to a receivership.

To apply for a WEPP payment, you must complete this application form.

CAN I APPLY?

If your former employer owes you wages and has filed for bankruptcy or is subject to a receivership, under the *Bankruptcy and Insolvency Act*, you may be eligible for a WEPP payment.

Your former employer's trustee/receiver will submit information regarding your unpaid wages to Service Canada and will provide you a copy of this information to assist you in completing this application. The information provided by the trustee/receiver will be used to help determine your eligibility and amount of the WEPP payment. If you disagree with the information the trustee/receiver provides regarding wages owed, please contact the trustee/receiver before applying to the WEPP.

AM I ELIGIBLE?

To be eligible for a payment under the Wage Earner Protection Program:

- Your employment must have ended;
- your former employer must have filed for bankruptcy or be subject to a receivership;
- you are owed wages, vacation pay, termination or severance pay from the former employer; and
- these amounts were earned during the six months immediately before the date of the bankruptcy/receivership or, in the case of termination or severance pay, your employment was terminated in the six month period ending on the date of bankruptcy or receivership.

WHO IS NOT ELIGIBLE?

An individual is not eligible to receive a payment for any wages earned during a period in which the individual:

- was an officer or a director of the former employer;
- had a controlling interest in the business of the former employer;
- occupied a managerial position with the former employer; or
- was not dealing at arm's length with any of these persons.

Note: If your employer has not declared bankruptcy or subject to a receivership, but still owes you wages, you are not eligible to apply for WEPP.

WHAT IS MY ENTITLEMENT?

- Eligible individuals may receive a WEPP payment to compensate them for unpaid wages, vacation pay, termination and severance pay that were earned during the six months immediately before the date of the bankruptcy/receivership.
- All WEPP payments are subject to a reduction in the amount of 6.82% prescribed by WEPP Regulations.

WHEN AND HOW DO I APPLY?

Applications must be submitted to Service Canada within 56 days of the later of the date of bankruptcy/receivership the date that your employment ended due to termination, resignation, retirement or expiry of term or the date on which the receiver terminated your employment. If there is good cause for missing this deadline, a written explanation for the delay must be provided in box 21.

You must submit a proof of claim to the trustee/receiver in order to receive a WEPP payment. A proof of claim is a written statement filed during bankruptcy or receivership proceedings in which a creditor cites the reason a debtor owes the creditor money. If you have not already filed a proof of claim, the trustee/receiver appointed in your former employer's bankruptcy/receivership will assist you in filing a proof of claim.

GLOSSARY OF TERMS

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Wages: Includes salaries, commissions, compensation for services rendered, vacation pay, termination and severance pay and any other amounts prescribed by regulation.

Bankruptcy: A proceeding in which an insolvent debtor's assets are liquidated and the debtor is relieved of further liability.

Receivership: An employer is subject to a receivership when any property of the employer is under the possession or control of a receiver.

Termination of Employment: In order to establish eligibility to the WEPP, an individual's employment has ended under any of the following conditions: resignation or retirement; termination of employment or expiry of a term employment contract.

Date of Bankruptcy: The date on which the bankruptcy was officially registered with the Office of the Superintendent of Bankruptcy (Industry Canada).

Officer: An individual appointed by the director(s) of a corporation to manage the day-to-day business of a company, such as president, vice-president, secretary, treasurer, etc. The position of officer is distinct from that of director, although one individual may occupy both positions.

Director: An individual elected by the shareholder(s) to supervise the management of a corporation.

Controlling Interest: An individual has controlling interest in a business when he owns more than 40% of the voting shares in the company; or he owns a block of voting shares that is large enough that no other shareholder or coalition of shareholders can block a motion; or he owns enough shares in a company to control the company's policy.

Arm's length: In order to be eligible for the WEPP, an applicant must demonstrate that he or she was dealing at arm's length with the former employer. Not dealing at arm's length means that as an employee, one would be able to exercise control or influence or to have a moral or psychological leverage sufficient to affect the freedom of decision of the former employer while it was in operation.

Vacation Pay: An employer may owe vacation pay earned within the period covered by the WEPP based on applicable legislation, collective agreement or other relevant basis. *The vacation pay entitlement under the WEPP is only with respect to vacation pay earned within the six month period prior to the bankruptcy or receivership.*

Termination Pay: When an employer terminates the employment of an employee, the employer must provide the employee with either written notice of termination, termination pay or a combination pursuant to relevant laws, contracts or collective agreements. The written notice required is generally determined by how long someone has been employed by an employer. Termination pay is generally a lump sum payment equal to the *regular wages for a regular work week* that an employee would otherwise have been entitled to during the written notice period. Some Canadian jurisdictions provide for collective termination pay where more than one individual is terminated within a prescribed period.

Severance Pay: This is compensation that is paid to a qualified employee, pursuant to relevant laws, contracts or collective agreements, where the employee has his or her employment "severed." It compensates an employee for loss of seniority and recognizes an employee's part service. Severance pay is not the same as termination pay, which is given in place of the required notice of termination of employment.

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Proof of Claim: A written statement filed in bankruptcy or receivership proceedings in which a creditor cites the reason a debtor owes the creditor money.

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Common law partner: Person who is cohabitating with an individual in a conjugal relationship for a period of at least one year (s.2 (1) of the *Bankruptcy and Insolvency Act*).

Subrogation: Under s. 36 of the *WEPP Act*, once a payment is made under the WEPP to an eligible individual in respect of unpaid wages, the Government of Canada is, to the extent of the payment amount, subrogated to any rights the individual may have in respect of those unpaid wages against the former employer or, in the case of a corporate employer, its directors, and may therefore exercise the individual's rights against the former employer and its directors.