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## BACKGROUND PAPER



# ***The Employment Insurance Program in Canada: How it Works***

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***The Employment Insurance Program in Canada:  
How it Works  
(Background Paper)***

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## APPENDIX: MAXIMUM NUMBER OF WEEKS OF BENEFITS BASED ON HOURS OF INSURABLE EMPLOYMENT AND REGIONAL RATE OF UNEMPLOYMENT

# THE EMPLOYMENT INSURANCE PROGRAM IN CANADA: HOW IT WORKS

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## 1 INTRODUCTION

The Employment Insurance (EI) program, formerly the Unemployment Insurance program, provides benefits in the event of job loss, illness, the birth of a child or a family member's serious illness, as well as employment programs, known as employment benefits and support measures. The program's financing mechanism has been amended over the years, and some changes have been in effect for only a short time. During the 40<sup>th</sup> Parliament, three government bills pertaining to the Employment Insurance program have been adopted, with related budget measures, and five private members' bills have made it to second reading in the House of Commons. The EI program, then, is complex and has undergone fairly frequent changes.

The program's parameters are set out in the *Employment Insurance Act* (EIA),<sup>1</sup> the *Employment Insurance Regulations* (EIR),<sup>2</sup> the *Employment Insurance (Fishing) Regulations* (EIR (Fishing)),<sup>3</sup> and the *Insurable Earnings and Collection of Premiums Regulations*.<sup>4</sup>

The Employment Insurance Commission is responsible for the application of the EIA and associated regulations. The commission has four members: the deputy minister and associate deputy minister of Human Resources and Skills Development Canada (HRSDC) and two commissioners, one of whom represents the interests of workers and the other the interests of employers. HRSDC employees are authorized to act on behalf of the Commission.<sup>5</sup>

The purpose of this paper is to provide an overview of the benefits that are available and the program's financing mechanism. Readers interested in additional information may consult the *Digest of Benefit Entitlement Principles*,<sup>6</sup> which provides a more detailed description of the program's various regulations. The *Index of Jurisprudence*<sup>7</sup> contains decisions on EI cases, specifically, 15 Supreme Court of Canada decisions, 35 Federal Court decisions, 1,200 Federal Court of Appeal decisions and 7,000 Umpire decisions.

The next section covers unemployment and employment benefits, and the last section addresses program financing. The appendix contains a table showing the maximum number of weeks of regular benefits based on hours of insurable employment and regional unemployment rates.

## 2 UNEMPLOYMENT AND EMPLOYMENT BENEFITS

Unemployment and employment benefits are defined in parts I and II of the EIA. Definitions of insurable employment, maximum yearly insurable earnings and benefit rate apply to all employment insurance benefits, meaning regular benefits (in the event of loss of employment) and special benefits (sickness, maternity, parental and compassionate care).

### 2.1 INSURABLE EMPLOYMENT, INSURABLE EARNINGS AND BENEFIT RATES

#### 2.1.1 INSURABLE EMPLOYMENT

Benefits are paid, under certain conditions, to claimants whose employment is insurable.<sup>8</sup> Employment is insurable when it is performed for one or more employers, including the government and the Canadian Forces. Also, since 2010, special benefits have been available to self-employed workers who register in the program.

Some employment is not insurable; some, for example, are casual employment in agriculture, entertainment or rescue operations, employment as a member of a religious order where the person has taken a vow of poverty, and under certain conditions, employment outside Canada.<sup>9</sup>

#### 2.1.2 MAXIMUM YEARLY INSURABLE EARNINGS

Benefits are paid based on yearly insurable earnings, up to a maximum annual amount. The 1996 EI reform reduced this maximum from \$42,380 in 1995 to \$39,000 in 1996, and froze it for five years.<sup>10</sup> In 2001, a new indexing formula was introduced.<sup>11</sup> However, this formula did not take effect until average yearly earnings in Canada surpassed \$39,000, which occurred in 2007. Table 1 shows this maximum in recent years.

**Table 1 – Maximum Yearly Insurable Earnings, 2005–2010**

Year	Maximum
2005	\$39,000
2006	\$39,000
2007	\$40,000
2008	\$41,100
2009	\$42,300
2010	\$43,200

Source: HRSDC, [Annual Reports on the EI Premium Rate and Maximum Insurable Earnings](#), 2006 to 2010.

#### 2.1.3 BENEFIT RATES

Employment insurance benefits are taxable. The weekly benefit rate is 55% of the claimant's average weekly insurable earnings. Weekly benefits are calculated by

dividing yearly insurable earnings by 52 and multiplying by 55%. The maximum weekly benefit was \$457 in 2010.

Definitions of the following three periods are provided to help the reader understand how the claimant's average weekly insurable earnings are calculated:<sup>12</sup>

- The *benefit period* is the period during which benefits may be paid to claimants who qualify to receive them. As a general rule, this is a 52-week period. This does not mean that benefits will be paid in each of the 52 weeks, but rather that the benefits for which the claimant qualifies must be paid during this period.
- The *qualifying period* is, in most cases, the 52-week period preceding the start of the *benefit period*. During the *qualifying period*, the claimant must have worked a certain number of hours in insurable employment to qualify to receive benefits. If another *benefit period* started during the 52 previous weeks, the *qualifying period* is shorter and begins at the start of the last *benefit period*.
- The *rate calculation period* is the last 26 weeks in the *qualifying period* or the entire *qualifying period* if it covers fewer than 26 weeks. The rate calculation period is used to calculate the amount of benefits to be paid to the claimant.

To calculate average weekly earnings, the insurable earnings during the *rate calculation period* must first be established. Insurable earnings during the *rate calculation period* are divided by the larger of the following divisors: the number of weeks during the *rate calculation period* in which the claimant occupied insurable employment, or the divisor shown in the table in subsection 14(2) of the EIA. This divisor ranges from 14 to 22, depending on the regional rate of unemployment, and corresponds with the qualifying requirements expressed in hours, converted into weeks, based on a 35-hour work week, plus two weeks.

For example, if the regional rate of unemployment is below 6%, claimants need 700 hours to qualify to receive benefits. The divisor in this case, then, would be 22 (i.e.,  $700/35 + 2$ ). This means that claimants from this region who accumulated insurable earnings of \$13,000 during the previous 26 weeks would receive 55% of \$500 if they worked in each of the previous 26 weeks, but would receive 55% of \$591 if they worked 22 weeks or less during the 26-week period (i.e.,  $\$13,000/22$ ), to better reflect their actual weekly earnings. The divisor thus imposes a certain restriction on the pace at which earnings can be accumulated and is designed to increase the figure used for the number of weeks worked by claimants. The divisor applies to only a small percentage of claims for regular benefits (between 2% and 4%).<sup>13</sup>

Low-earning weeks (also referred to as small weeks), meaning a week in which earnings are less than \$225, are excluded from the calculation of average insurable earnings, provided that the number of weeks of earnings (small or otherwise) are equal to or greater than the divisor.<sup>14</sup>

The family supplement is added as a benefit top-up for families who receive the Child Tax Benefit and have a net family income of \$25,921 or less. The amount of the supplement is based on net family income and the number of children under the age of 18 and under the age of seven.<sup>15</sup> For example, a family with three children under the age of seven and income under \$20,921 receives a weekly supplement of

\$98.55. If both parents are receiving EI benefits, only one qualifies to receive the supplement. The supplement cannot exceed 25% of weekly insurable earnings, meaning that the maximum benefit rate can reach 80% of weekly insurable earnings but cannot exceed \$457, the maximum weekly benefit. Supplement amounts and qualifying income thresholds are not indexed to average salary variations or the price index. In 2008–2009, 5.9% of all unemployment and fishing benefits paid included a supplement, and the average weekly supplement paid was \$42.<sup>16</sup>

## 2.2 REGULAR BENEFITS

### 2.2.1 QUALIFYING CONDITIONS

An individual in insurable employment qualifies to receive regular benefits under certain conditions if a job loss or contract termination has resulted in an interruption in earnings for a minimum of seven consecutive days.

Claimants must have worked a certain number of hours in insurable employment during their *qualifying period* (in most cases, the 52-week period immediately before the start of a *benefit period*). The number of hours required is based on the claimant's status (see the next section).

The *qualifying period* may be extended by the number of weeks during this period in which the claimant was unable to work owing to illness, pregnancy or incarceration, was in receipt of provincial employment or sickness benefits, or was unable to establish an interruption of earnings due to the receipt of separation pay from an employer. The maximum extension is 52 weeks, meaning that a *qualifying period* can last a maximum of 104 weeks.<sup>17</sup>

Claimants whose employment is terminated because of misconduct or who leave their employment voluntarily<sup>18</sup> do not qualify for benefits unless they can show they had just cause for leaving, for example, sexual harassment, employer practices that are contrary to law or dangerous working conditions.<sup>19</sup> Claimants who are unemployed because of a labour dispute are not entitled to receive benefits for the duration of the dispute.<sup>20</sup> Insured persons are not entitled to receive benefits if they are receiving unemployment benefits from the United States (and vice versa), under an agreement between the two countries.<sup>21</sup>

Finally, claimants must be capable of and available for work unless they are engaged in jury service or are sick or injured, in which case they could qualify for sickness benefits. Claimants are not entitled to receive benefits while incarcerated or out of Canada, with a few exceptions.<sup>22</sup> Claimants must also seek employment and accept suitable employment that is offered to them, again with a few exceptions, including, for example, if the conditions of employment are less favourable than the claimant might expect to obtain or if the employment offered is materially different from the previous employment.<sup>23</sup> Full-time students are deemed not available, although some part-time students may qualify for benefits.<sup>24</sup> Most of these requirements are assessed on the reports that claimants must submit every two weeks.

### 2.2.1.1 PERSONS WHO ARE NEW ENTRANTS OR RE-ENTRANTS TO THE LABOUR FORCE

To qualify for benefits, persons who are new entrants or re-entrants to the labour force must have accumulated at least 910 hours of insurable employment during their *qualifying period*.<sup>25</sup>

Insured persons are considered new entrants or re-entrants to the labour force if, in the 52 weeks before their *qualifying period*, they accumulated fewer than 490 hours dedicated to any of the following three elements or to any combination of them:

- insurable employment;
- time when benefits were paid or payable to them (calculated on the basis of 35 hours for each week of benefits);
- time related to employment in the labour force.<sup>26</sup>

Persons who have received maternity or parental benefits in the two to five years preceding the start of the *qualifying period* are not considered new entrants or re-entrants to the labour force.<sup>27</sup>

### 2.2.1.2 ALL OTHER PERSONS

Persons other than those who are new entrants or re-entrants to the labour force must have accumulated 420 to 700 hours of insurable employment during the *qualifying period*, based on the rate of unemployment in their economic region of residence. There are 58 economic regions in Canada, with unemployment rates ranging, in August 2010, from 4.6% to 25%.<sup>28</sup> At least once every five years, the Commission is required to review the boundaries of the regions to determine whether changes to the boundaries are appropriate.<sup>29</sup> Claimants must accumulate 700 hours in regions where the rate is 6% or less and 665 hours where the unemployment rate is more than 6% but not more than 7%; the number of hours required is decreased by 35 hours per additional percentage point in the unemployment rate, to a minimum of 420 when the unemployment rate is over 13%.<sup>30</sup>

### 2.2.1.3 PENALTIES FOR VIOLATIONS

The number of insured hours required to receive benefits increases by 25%, 50%, 75% or 100% respectively if the insured person was guilty of a minor, serious, very serious or subsequent violation of the EIA during the five years preceding the claim for benefits. For persons who are new entrants or re-entrants to the labour force who commit a violation, the percentage increase in the number of required hours is almost the same.<sup>31</sup> The seriousness of the violation is based on its financial value: it is considered minor if the value is under \$1,000, serious if valued at \$1,000 to \$5,000 and very serious if valued at over \$5,000. The violation is subsequent if it was committed within five years of a previous violation. Finally, a violation does not affect the number of hours required for more than two claims if the person qualified for benefits in each of those two claims.



### 2.2.2 BENEFIT PERIOD

The employer must provide an insured person with a Record of Employment (ROE) or submit the ROE electronically to Service Canada within five days of the termination of employment.<sup>32</sup> The person has four weeks from the end of employment to submit a claim, and failure to do so could result in the *benefit period* being shortened. If a claimant submits the claim after the first day on which he or she meets the qualifying conditions, the claim may be considered as having been submitted on that first day if the claimant can show good cause for the delay.

The *benefit period* begins on the Sunday of the week in which the interruption of earnings occurs or on the Sunday of the week in which the claim for benefits is made, whichever is later. In most cases, the *benefit period* is a maximum of 52 weeks;<sup>33</sup> it ends when the person is no longer unemployed, has been paid the maximum number of weeks of benefits or asks to have the benefit period terminated.

The maximum number of weeks in which a claimant can receive benefits during the *benefit period* for each week of unemployment varies based on the regional unemployment rate and the number of hours of insurable employment, i.e., from 14 to 45 weeks as a general rule.<sup>34</sup> The lower the regional unemployment rate, the lower the maximum number of weeks of benefits. The appendix shows the maximum number of weeks of benefits in detail.

Finally, there is a two-week waiting period at the start of a *benefit period*, during which no benefits are paid. This does not affect the maximum number of weeks of benefits described above, but simply the date on which the first payment is made.

### 2.2.3 DEDUCTIONS

All earnings received during the benefit period are deducted from benefit payments.<sup>35</sup> Payments for leave and separation pay may simply defer the start of benefit payments, rather than reduce them.

Most pension benefits are considered earnings, including income from the Canada Pension Plan or the Quebec Pension Plan (excluding disability or survivor benefits). There are some exceptions, such as income from a Registered Retirement Savings Plan (RRSP) or a Registered Retirement Savings Fund (RRSF). If individuals requalify for EI benefits after the date on which they begin to receive their pension, that pension does not constitute earnings.<sup>36</sup>

Deductions from EI benefits vary depending on whether the earnings were received during the waiting period or in subsequent weeks. All earnings received during the waiting period are deducted from EI benefits. Days for which the claimant is not entitled to benefits during this period (for example, if the claimant is not available for work) are also deducted at a rate of one-fifth of the weekly benefit rate per day of disentanglement. Deductions for earnings or disentanglement during the waiting period are taken during the first three weeks of benefits only, after which any remaining deductions are set aside. After the waiting period, earnings of \$50 or 25% of the benefit rate (whichever is higher) are allowed for part-time work.<sup>37</sup> Earnings above

this limit are deducted in full. Days on which the claimant is not available for work also lead to reductions in benefits. All deductions are made during the week in which the earnings are recorded or when the claimant is unavailable, and are not deferred to a subsequent week.

Finally, some regular EI benefits must be repaid. When a claimant's income for a given tax year exceeds 1.25 times the maximum yearly insurable earnings (i.e., \$54,000 in 2010),<sup>38</sup> the claimant must repay, before 30 April of the following year, the equivalent of 30% of a) the amount of regular or fishing benefits received during the year, or b) the amount of income above the yearly maximum, whichever is lower, and report this on his or her tax return. Claimants who have not received regular or fishing benefits in the preceding 10 years are not required to repay this amount. Special benefits do not have to be repaid.<sup>39</sup>

## 2.2.4 STATISTICS ON REGULAR BENEFITS

Table 2 shows statistics on regular EI benefits for the month of June 2008, 2009 and 2010. The data show that the number of recipients and the total monthly benefits paid rose in late 2008 and early 2009. For all of fiscal 2007–2008, the value of regular benefits paid was close to \$8 billion (data not included in the table)<sup>40</sup> and climbed to close to \$9.5 billion in 2008–2009.<sup>41</sup> According to estimates by the Office of the Parliamentary Budget Officer, the value of regular benefits could reach just over \$15 billion in 2009–2010.<sup>42</sup> The number of recipients and total benefit payments declined between June 2009 and 2010 but have not returned to pre-recession levels.

**Table 2 – Statistics on Regular EI Benefits**

	June 2008	June 2009	June 2010
Number of recipients	471,840	829,290	691,640
Average weekly benefit	\$325.64	\$350.43	\$344.01
Total benefits paid	\$616,479,260	\$1,047,842,820	\$886,873,470

Note: Data in the first line are seasonally adjusted, and data in the second and third lines are not.

Source: Statistics Canada, Labour Statistics Division, *Employment Insurance Statistics*, August 2008, 2009 and 2010, Tables 6c and 10.

## 2.3 SPECIAL BENEFITS

In addition to regular benefits, the EI program also pays special benefits (maternity, parental, sickness and compassionate care benefits). These four types of benefits share certain characteristics.

An interruption of earnings occurs when there is a reduction of more than 40% in an insured person's normal weekly earnings when the person stops working for one of the four reasons associated with special benefits.<sup>43</sup> Unlike regular benefits, special benefits are available to persons dismissed for misconduct,<sup>44</sup> and for persons unable to work because of a labour dispute.<sup>45</sup> The insured person must also be a major attachment claimant, meaning a claimant who has accumulated at least 600 hours of insurable employment during the *qualifying period*.<sup>46</sup>

Claimants can receive maternity, parental and compassionate care benefits when they are outside Canada. However, this is not the case with sickness benefits, which claimants cannot receive outside Canada unless they are undergoing treatment not available in Canada.

As of 2010, self-employed workers are able to access all types of special benefits if they voluntarily register for the EI program.<sup>47</sup> They must pay premiums for at least one year before they can claim benefits. Because the program took effect in January 2010, the earliest that self-employed workers who registered with the program will be able to make a claim for benefits is January 2011.<sup>48</sup> To qualify to receive special EI benefits, self-employed workers must have earned a minimum of \$6,000 of income from self-employment in the previous calendar year. They can withdraw from the plan at the end of any tax year provided they have not ever received benefits. If they have received benefits, they must continue paying EI premiums for the duration of their self-employed career.

Finally, deductions from special benefits are different from deductions from regular benefits. During weeks in which the insured person receives maternity or sickness benefits all earnings – not just the portion that exceeds the maximum allowable earnings – are deducted. However, when parental and compassionate care benefits are received, only earnings that exceed the maximum allowable are deducted.

### 2.3.1 MATERNITY BENEFITS

Maternity benefits are payable to major attachment claimants who have given birth (i.e., claimants who have accumulated at least 600 hours of insurable employment during their *qualifying period*). The benefit period can start up to 8 weeks before the claimant is expected to give birth or as of the week she gives birth if it is more than 8 weeks before the anticipated date, and ends 17 weeks after the actual or expected week of birth, whichever is later. This means that the *benefit period* can last 25 weeks or longer. It can be extended if the newborn is hospitalized during the *benefit period*, by the number of weeks the child is in hospital, but the *benefit period* cannot be longer than 52 weeks from the week of birth. Regardless of the length of the *benefit period*, maternity benefits can be paid up to a maximum of 15 weeks.

### 2.3.2 PARENTAL BENEFITS

Parental benefits are payable to a major attachment claimant who has given birth in order for that person to care for a biological newborn or for an adopted child. The *benefit period* starts the week of the child's birth or adoption, and ends 52 weeks later. For parental benefits, the *benefit period* may be extended if the child is hospitalized during the 52-week *benefit period* for the number of weeks of the hospitalization, to a maximum of 104 weeks. As of 2010, the *benefit period* may be extended to a maximum of 104 weeks for members of the Canadian Forces who are ordered to return to duty.

Regardless of the length of the *benefit period*, parental benefits are paid to a maximum of 35 weeks, consecutive or non-consecutive. Both partners caring for the

same child can share weeks and take them simultaneously or separately. Finally, when parental benefits are shared between both parents, only one waiting period has to be served.

### 2.3.3 SICKNESS BENEFITS

Major attachment claimants who are unable to work because of sickness, injury or quarantine but would otherwise have been available for work are entitled to receive sickness benefits. A medical certificate is required.<sup>49</sup> Sickness benefits are paid up to a maximum of 15 weeks.<sup>50</sup>

### 2.3.4 COMPASSIONATE CARE BENEFITS

Compassionate care benefits are paid to major attachment claimants to provide care or support to a family member who is gravely ill with a significant risk of death within 26 weeks. A medical certificate and an authorization to release a medical certificate (signed by the ill person) are required.<sup>51</sup> The definition of family member is fairly broad, and in addition to spouse, parents and children, includes grandparents, uncles, aunts, nephews, nieces and grandchildren.<sup>52</sup> Compassionate care benefits are paid up to a maximum of six weeks, although the *benefit period* can be 26 weeks in length. The *benefit period* starts the day the doctor signs the medical certificate, or the day the family member became ill if the claim is submitted before the certificate is issued. The *benefit period* ends when the six weeks of benefits have been paid, the family member dies or the 26-week period has expired. Several individuals can share the benefit weeks, but only one claimant need serve the waiting period.

### 2.3.5 STATISTICS ON SPECIAL BENEFITS

Table 3 shows statistics on special benefits. Economic conditions have much less impact on the number of special benefit recipients than on the number of regular benefit recipients. For all of 2008–2009, the total value of special benefits was \$3.9 billion, substantially less than the \$9.5 billion in regular benefits. While sickness, maternity, and parental (including adoption) benefits amounted to \$1 or \$2 billion each, compassionate care benefits totalled only \$9.9 million.<sup>53</sup> Benefits to adoptive parents are not a separate category and are included under parental benefits. Maternity benefits are not available to adoptive parents.

**Table 3 – Statistics on Special EI Benefits, 2008–2009**

Benefit Type	Number of Recipients	Average Number of Weeks	Average Weekly Benefits (\$)	Total Benefits Paid (\$ million)
Sickness	332,220	9.4	327	1,008.8
Maternity	172,650	14.6	350	876.2
Parental	191,880	29.8	360	2,025.7
Adoption	2,100	26.8	408	23.8
Compassionate care	5,837	4.7	352	9.9

Source: Canada Employment Insurance Commission, [Employment Insurance Monitoring and Assessment Report 2009](#), p. 121–126.

## 2.4 FISHING BENEFITS

Fishers are the only self-employed workers eligible to receive benefits similar to regular benefits. However, qualifying conditions, benefit rates and benefit periods are different than those for regular benefits.<sup>54</sup>

The *qualifying period* starts during the week of 1 March or during the week of 1 September, depending on the fishing season. The maximum length of the *qualifying period* is 31 weeks counting back from the week prior to the beginning of the claim. During this period, new fishers or individuals who have returned to fishing after an absence of a year or more preceding the *qualifying period* must have earned a minimum of \$5,500 in fishing during the *qualifying period*. Minimum earnings range from \$2,500 to \$4,200 for other fishers, based on the regional rate of unemployment as shown in the table appended to the EIR (Fishing). To qualify to receive special benefits, fishers must have earned a minimum of \$3,760 during the *qualifying period*.<sup>55</sup> Eligibility is determined on the basis of earnings rather than hours of employment because fishers are paid based on the value of their catch. The variable-hours system used to determine fisher eligibility corresponds to the hours-of-work system used for salaried workers, with an hourly conversion rate of approximately \$6. The various earning ranges are not increased based on the average increase in wages or price indexes. The amount of fishing earnings required to claim fishing benefits is increased for violations in the preceding five years.

For fishing benefits, earnings in the *qualifying period* are divided by a divisor ranging from 14 to 22, depending on the regional rate of unemployment. For regular benefits, earnings in the *rate calculation period* are divided by this divisor or the number of work weeks in the *rate calculation period*, whichever is higher. Benefits are paid up to a maximum of 26 weeks; this period is not tied to the regional rate of unemployment. Fishers are subject to the same deductions as other workers.

As with regular benefits (see section 2.2.3), fishing benefits are subject to partial repayment if the claimant's income surpasses a certain level (\$54,000 in 2010).

Table 4 presents statistics on the number of recipients and the value of fishing benefits. In 2008–2009, fishing benefits reached \$246.2 million, a 1.7% increase from the previous year.<sup>56</sup> Because the months making up fishing seasons have a greater impact than the economic climate on claims for fishing benefits, data from the last 12 months is provided. The value of benefits and the number of recipients are higher in the winter and lower in the summer.

**Table 4 – Statistics on EI Fishing Benefits, 2009–2010**

Period		Number of Recipients	Average Weekly Benefits	Total Benefits Paid
2009	July	7,250	\$400.69	\$8,790,660
	August	8,460	\$407.26	\$17,672,260
	September	8,800	\$407.80	\$15,353,750
	October	11,180	\$408.75	\$17,068,250
	November	15,400	\$409.40	\$31,579,010
	December	15,810	\$407.78	\$26,944,180
2010	January	16,240	\$402.85	\$29,186,920
	February	16,620	\$403.95	\$28,604,680
	March	16,550	\$402.17	\$29,709,560
	April	14,690	\$402.50	\$26,944,400
	May	5,850	\$395.64	\$16,438,480
	June	4,490	\$392.52	\$6,783,980

Note: All data are raw and are not seasonally adjusted.

Source: Statistics Canada, Labour Statistics Division, *Employment Insurance Statistics*, September 2009–August 2010, Tables 6c and 9.

## 2.5 WORK-SHARING

The Commission may make regulations providing for the payment of work-sharing benefits under an agreement between Service Canada, an employer and employees to reduce the hours of all permanent employees of the company.<sup>57</sup> Eligible employees can receive regular EI benefits for the days they are not working, and do not have to serve a waiting period.

To qualify for the work-sharing program, employers must have been in business in Canada for at least two years; show that the work shortage is unavoidable, temporary and unexpected (and not related to a seasonal downturn); prepare a recovery plan showing how the business will be maintained for the duration of the agreement; not be undergoing a labour dispute; and have the agreement of the employees. The reduction in work hours can vary from week to week, but must be between 20% and 60% on average, meaning from one to three days a week, for the duration of the agreement, which can last from 6 to 38 weeks in straight time.<sup>58</sup>

Table 5 presents statistics on work-sharing benefits for the month of June in 2008, 2009 and 2010. The value of benefits climbed from approximately \$2 million in June 2008 to over \$30 million in June 2009, more than double the amount for all of fiscal 2007–2008 (\$14.5 million). Work-sharing benefits totalled \$56.4 million in 2008–2009.<sup>59</sup> The average weekly benefit is much lower than for regular benefits because work-sharing benefits cover only a portion of the week (days not worked).

**Table 5 – Statistics on EI Work-sharing Benefits**

	June 2008	June 2009	June 2010
Number of recipients	4,690	67,850	39,900
Average weekly benefit	\$90.42	\$109.70	\$93.18
Total benefits paid	\$2,115,110	\$30,529,270	\$13,448,120

Note: All data are raw and are not seasonally adjusted.

Source: Statistics Canada, Labour Statistics Division, *Employment Insurance Statistics*, August 2008, 2009 and 2010, Tables 6 c and 9.

## 2.6 MORE DETAILS ON UNEMPLOYMENT BENEFITS

### 2.6.1 COMBINED BENEFITS

Different types of benefits can be combined. For example, a person who becomes unemployed may also become ill, and a person on parental leave may become unemployed. They can receive two types of benefits (successively, not simultaneously). In these cases, claimants may receive up to 50 weeks of combined benefits. When only special benefits are involved, claimants may receive up to 71 weeks of benefits if combinations of the four types of special benefits are paid one after the other.<sup>60</sup>

### 2.6.2 PROVISIONS FOR TEACHERS

Special provisions apply to teachers who, in most cases, work from September to June. Teachers are not entitled to receive regular benefits in July and August, except in certain circumstances – for example, if they were under a term contract and there is no verbal or written agreement stating that they will be teaching again in September.<sup>61</sup>

### 2.6.3 PILOT PROJECTS

The Commission may implement pilot projects, generally for a three-year period, to assess the impact of changes to the program. These projects are often restricted to a few specific regions and generally involve unemployment benefits.

Three pilot projects were in effect in August 2010.<sup>62</sup> Under Pilot Project No. 11, which is in effect from October 2008 to October 2010 in certain regions with high unemployment rates, the benefit rate is calculated based on the 14 best weeks of earnings received during the *qualifying period*. Pilot Project No. 12, in effect from December 2008 to December 2010 across Canada, allows claimants a higher earnings threshold during benefit weeks. Pilot Project No. 13, implemented in December 2005, was extended to December 2010, and enables new entrants or re-entrants to the labour force in the same regions as Pilot Project No. 11 to qualify with 840 hours of insurable employment rather than 910 hours.<sup>63</sup>

In October 2010, the government announced that Pilot Project Nos. 11 and 12 would be extended for eight weeks. In addition, Pilot Project No. 10, which provided five extra weeks of benefits and which was ended when it had been implemented across the country between 1 March 2009 and 10 September 2010, will once again become a pilot project in some regions until 15 September 2012.<sup>64</sup>

### 2.6.4 APPEALING EMPLOYMENT INSURANCE DECISIONS

Claimants or employers who disagree with a Commission decision must send a letter within 30 days of receipt of the decision.<sup>65</sup> The Commission, through Service Canada, acknowledges receipt and reviews the decision. If it upholds the decision, the case will be heard by a Board of Referees, at no expense to the claimant or employer and with no obligation for a lawyer's services. The Commission must send

the appeal docket to the claimant or employer and to the members of the Board of Referees. The Board is an administrative tribunal of first instance, and does not represent the claimant, the employer or the Commission. The Board has three members (a chairperson and two members) and renders a decision based on the EIA and the EIR. The chairpersons are appointed by the Governor in Council at the recommendation of the Minister of HRSDC, and the members are appointed by the Commissioner for Workers and the Commissioner for Employers. Chairpersons and members are appointed for a three-year term. There are about 1,000 Board of Referees members in Canada.<sup>66</sup>

Any decision by a Board of Referees can be appealed to an Umpire by the claimant, the employer or the Commission. The appeal to the Umpire must be filed within 60 days of the Board of Referees' decision.<sup>67</sup> Umpires are generally judges of the Federal Court of Canada. The Umpire examines the decision by the Board of Referees. Usually the decisions of the Umpire are final, but some may be reviewed by the Federal Court of Appeal or even the Supreme Court of Canada, which could entail costs.

## **2.7 EMPLOYMENT BENEFITS**

Employment benefits and support measures (EBSM) are intended to help participants become more employable. Most EBSMs are offered by provinces and territories under Labour Market Development Agreements (LMDA). LMDA funds are transferred to the provinces and territories for the programs. All provinces and territories now have transfer agreements in place.

Employment benefits can include financial assistance or wage subsidies and are provided through five programs: Skills Development, Targeted Wage Subsidies, Self-Employment, Job Creation Partnerships and Targeted Earnings Supplements.

Support measures comprise Employment Assistant Services, Labour Market Partnerships, and Research and Innovation. In co-operation with the provinces and territories, HRSDC maintains the National Employment Service (job bank and labour market information) and delivers pan-Canadian activities, including the Aboriginal Skills and Employment Strategy, the Sector Council Program, the Youth Awareness Program, the National Essential Skills Initiative, the Labour Market Mobility Initiative and the Labour Market Transition Initiative.<sup>68</sup>

All EBSMs are available to claimants with active EI claims and those who have established a benefit period in the last three years (or the last five years for maternity or parental benefit claimants), while others can access employment services only.

Furthermore, Labour Market Agreements are in place with all of the provinces and territories to provide assistance for individuals who do not qualify for programs under Part II of the EIA.

In 2008–2009, expenditures under Part II of the EIA totalled \$2.11 billion, an increase of 0.8% from the previous year.<sup>69</sup> Some employment benefit programs commit expenditures under both Part I (unemployment benefits paid to users of these



programs) and under Part II (other expenditures related to this program). Benefits paid to EBSM participants under Part I totalled \$476.4 million in 2008–2009.<sup>70</sup> For example, apprentices can receive unemployment benefits under Part I and take advantage of EBSMs under Part II.<sup>71</sup> Additionally, apprentices have to serve only one waiting period if they alternate several periods of training and employment.

### **3 EMPLOYMENT INSURANCE PROGRAM FINANCING**

#### **3.1 PREMIUMS**

Parts III and IV of the EIA set out rules for the program's financing and for the collection of premiums. Unemployment and employment benefits, support measures and program administration costs are financed by employee and employer contributions.

Employees must pay premiums equal to the premium rate multiplied by their insurable earnings, up to the maximum insurable earnings. Employees in Quebec pay a reduced rate because they do not have access to maternity and parental benefits, which are provided by a provincial plan.

Employers also pay premiums on their employees' insurable earnings, at a rate 1.4 times the employee rate. This means that employers pay for 7/12 of the program's costs, and employees pay 5/12 of the costs. In 2010, the employee rate is 1.73% (1.36% in Quebec), and the employer rate is 2.42% (1.90% in Quebec).

Self-employed workers outside Quebec who register for the program to access special benefits also pay the 1.73% rate (but cannot access regular benefits). Self-employed workers in Quebec pay the same rate as Quebec employees (1.36%) for access to sickness and compassionate care benefits.<sup>72</sup>

Employees who pay more than the maximum annual contribution (for example, if they change employers during the year) are entitled to a refund of the overpayment.<sup>73</sup> If an employee's insurable earnings do not exceed \$2,000 during a given year, any EI premiums they pay are refunded.<sup>74</sup>

Employer premiums may be reduced if employees are covered under a wage insurance plan that could reduce the special benefits payable by the Commission, and if the amount of benefits to be paid to the insured employees is equal to not less than 5/12 of the reduction in the employer premium.<sup>75</sup>

#### **3.2 SETTING THE PREMIUM RATE**

In the late 1990s and early 2000s, the EI program consistently recorded annual surpluses, resulting in a cumulative surplus of approximately \$57 billion at the end of fiscal 2007–2008. These surpluses were used to pay for non-EI government expenditures.<sup>76</sup>

The Canada Employment Insurance Financing Board (CEIFB) was created in June 2008 under the *CEIFB Act*, to ensure that EI premiums are used to pay benefits only. The CEIFB is responsible for adopting a premium rate-setting mechanism, managing the EI account and maintaining a \$2-billion reserve as a contingency fund. It is run by a board of seven directors, appointed between June and September 2009. It is required to produce quarterly and annual financial statements and an annual report providing premium rates for the coming year. The annual report is sent to the Minister of HRSDC and the President of Treasury Board within 90 days of each fiscal year end. The Minister must table the report in each house of Parliament in the first 15 days of the session following receipt of the report. The report is then referred automatically to a parliamentary committee.

In 2008, the Commission set the employee premium rate at 1.73% for the following year. In Budget 2009, the government froze the rate for 2010 at 1.73% to support economic recovery, even though it anticipated that this could result in a deficit in the Employment Insurance Account, owing to the recession.

Before 30 September of each year, the Department of Finance must provide the CEIFB with information on credits to the Employment Insurance Account and important economic variables needed to set the premium rate. The CEIFB must set the rate, to ensure that contributions equal expenditures forecast for the next year, plus all advances to the CEIFB to cover deficits as of 1 January 2009<sup>77</sup> (date of creation of the Employment Insurance Account) and to maintain the \$2-billion reserve, which must be indexed as of 2009. However, because the premium rate usually cannot change by more than 0.15 percentage points, the difference between the break-even rate and the current rate may be higher than the allowable maximum, in which case the CEIFB must set the rate at the allowable maximum. The CEIFB has until 14 November to set the rate.<sup>78</sup> Up to 30 November, the Governor in Council may, on the joint recommendations of the ministers of HRSDC and Finance, set a rate different than the CEIFB-recommended rate, including a rate that results in a difference of greater than 0.15 percentage points.

According to a document produced by the Office of the Parliamentary Budget Officer in April 2010, the Employment Insurance Account is projected to show annual deficits of approximately \$6.5 billion in 2009 and 2010, and close to \$1.9 billion in 2011 (assuming that the premium rate is raised by 0.15 percentage points).<sup>79</sup> This suggests that the rate must be raised by 0.15 points each year until 2014 or 2015 to offset deficits in 2009 to 2011.

The CEIFB was to have set the premium rate in 2011.<sup>80</sup> However, on 29 September 2010, the Minister of Finance announced that the premium rate would be increased by 0.05 percentage points and that increases in subsequent years would not exceed 0.10 percentage points. It was also announced that public consultations would be held to explore ways to improve how the premium rates are set.<sup>81</sup>

It is conceivable that the \$2 billion reserve payment to be made soon into the Employment Insurance Account will reduce the Account deficit by the same amount, thus accelerating a return to the break-even point. Additionally, according to section 73.1 of the EIA, on 1 August 2010 the Consolidated Revenue Fund was

required to credit to the Employment Insurance Account approximately \$2.9 billion, the estimated value of the temporary program enhancements set out in Budget 2009 (freezing the premium rate, increasing the maximum number of weeks of benefits).

An annual deficit (or surplus) in the Employment Insurance Account will continue to be included in the Public Accounts. Consequently, for example, if the government's other activities produce a \$7-billion deficit and the Employment Insurance Account has a surplus in the same amount, fiscal balance will be achieved, even though the \$7 billion in the Employment Insurance Account cannot be transferred to the Consolidated Revenue Fund. This surplus will be used to finance future premium reductions or make improvements to the program. Similarly, annual deficits in the Employment Insurance Account can be offset using past surpluses. If there is no surplus, the Consolidated Revenue Fund will have to transfer the amount of the deficit to the CEIFB, which will repay it with interest. In short, the goal is to achieve a balance between benefits and premiums over time, without the accumulation of an excessive surplus or deficit over the long term.

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## NOTES

1. [Employment Insurance Act](#), S.C. 1996, c. 23 [EIA], current to 22 September 2010.
2. [Employment Insurance Regulations](#), SOR/96-332 [EIR], current to 22 September 2010.
3. [Employment Insurance \(Fishing\) Regulations](#), SOR/96-445 [EIR (Fishing)], current to 22 September 2010.
4. [Insurable Earnings and Collection of Premiums Regulations](#), SOR/97-33, current to 22 September 2010.
5. Service Canada, [Information Handbook for Employment Insurance Boards of Referees](#).
6. Service Canada, [Employment Insurance – Digest of Benefit Entitlement Principles](#).
7. Service Canada, [The Index of Jurisprudence: A Supplement to the Digest of Benefit Entitlement Principles](#).
8. Insurable employment is defined in section 4 of the EIA and section 5 of the EIR.
9. See subsection 5(2) of the EIA and sections 7, 8 and 9 of the EIR for other jobs that are excluded.
10. Human Resources and Skills Development Canada, [“Employment Insurance Premium Rate Set At \\$2.25 For 2001 And Level Of Maximum Earnings Remains At \\$39,000,”](#) News release, Ottawa, 1 December 2001.
11. The new maximum is calculated by increasing or decreasing the previous year's maximum (before rounding down) based on the rate of change in average weekly earnings (including overtime) in Canada for the 12-month period ending 30 June compared with the previous 12-month period, and rounded down to the nearest hundred.
12. The three terms are shown in italics throughout the document for purposes of clarity.
13. Canada Employment Insurance Commission, [Monitoring and Assessment Report 2009: Employment Insurance](#), March 2010, p. 87.
14. Section 24.2 of the EIR defines low-earning weeks and their exclusion from the calculation of weekly benefit rates. For specific examples, see Service Canada, [Employment Insurance \(EI\) and small weeks](#).

15. The amount of the family supplement is shown in the table in subsection 34(5) of the EIR.
16. Canada Employment Insurance Commission (2009), Annex 2.13, p. 127.
17. The conditions for extending a qualifying period are defined in section 8 of the EIA.
18. EIA, s. 33.
19. The various circumstances are set out in paragraph 29(c) of the EIA.
20. EIA, s. 36.
21. EIA, subsection 7(6).
22. EIA, s. 37. The exceptions for claimants travelling outside Canada are set out in subsection 55(1) of the EIR, and include undergoing medical treatment not available in Canada or attending the funeral of an immediate family member.
23. The requirements and exceptions are set out in sections 18 and 27 to 37 of the EIA.
24. Availability for work is a complex concept and is assessed on a case-by-case basis. For more details, see Service Canada, [Digest of Benefit Entitlement Principles](#), Chapter 10.
25. The method for calculating the number of hours is explained in sections 9 to 11 of the EIR.
26. Prescribed hours related to employment in the labour force may include, for example, time spent attending an approved training or job creation project.
27. EIA, s. 7; EIR, s. 12.
28. Human Resources and Skills Development Canada, [Unemployment Rates for the Economic Regions](#).
29. EIR, subsection 18(2).
30. The unemployment rate used is the seasonally adjusted unemployment rate for the economic region averaged over the last three months, published by Statistics Canada.
31. The number of hours is increased by 25% for a minor violation, 50% for a serious violation and 54% for a very serious violation, increasing the number of hours required to 1,400.
32. EIR, subsection 19(3).
33. The benefit period may be extended to up to 104 weeks in certain cases set out in subsection 10(10) of the EIA, which are similar to those invoked to extend the qualifying period. The benefit period may also be extended (in 2009 and 2010) for long-tenured workers, who must have contributed to the program at least 30% of the annual maximum EI premiums for at least seven of the 10 previous years.
34. For benefit periods starting between 1 March 2009 and 10 September 2010, the maximum number of weeks of benefits was increased by five weeks. Also, certain long-tenured workers are entitled to receive an extension of five to 20 weeks. For more details, see Alysia Davies, [Bill C-50: An Act to amend the Employment Insurance Act and to increase benefits](#), Publication no. LS-660E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 November 2009.
35. Earnings from paid leave are allocated differently, depending on the timing of the payment, the reason for the payment and whether the payment is accumulated in a trust account. For more details, see Service Canada, [Employment Insurance \(EI\) and the various types of earnings](#).
36. Earnings are defined in detail in section 35 of the EIR.
37. Between December 2008 and December 2010, allowable earnings were increased by the higher of \$75 per week or 40% of the weekly benefit.

38. This is total income, from which the Universal Child Care Benefit (except any overpayment), and income from a Registered Disability Savings Plan, etc., are deducted (lines 207 to 232 of the income tax return).
39. Benefit repayment is defined in Part VII of the EIA.
40. Canada Employment Insurance Commission, [\*Employment Insurance Monitoring and Assessment Report 2008\*](#), Chapter 2, Section I, Table 1.
41. Canada Employment Insurance Commission (2009), Chapter 2, Table 2, p. 19.
42. Jeff Danforth, [\*Projecting Employment Insurance Premium Revenues and Expenses\*](#), Office of the Parliamentary Budget Officer, 15 April 2010, Table 1, p. 2.
43. EIR, subsection 14(2).
44. EIR, s. 34.
45. An exception may be made for a person who had anticipated an absence from employment prior to the start of the labour dispute (EIA, s. 36).
46. EIA, subsection 6(1).
47. Since 2006, self-employed workers in Quebec have been able to access the Quebec Parental Insurance Plan for maternity and parental benefits, and as of 2010, may access EI sickness and compassionate care benefits.
48. Self-employed workers who register during the year must pay premiums for the entire year. For example, a person who registers for the plan in November 2010 will have to pay premiums for all of 2010 and will not be able to submit a claim for benefits until November 2011. For the first year of the plan, self-employed workers had to register prior to 1 April 2010 and will be able to submit claims as early as January 2011.
49. EIR, s. 40.
50. EIA, subsection 12(3).
51. EIA, subsection 23.1(2).
52. The complete list is included in subsection 41.11(1) of the EIR.
53. Canada Employment Insurance Commission (2009), Chapter 2, Table 2, p. 19.
54. Part VIII of the EIA authorizes the Commission to make regulations respecting the establishment of an EI scheme for self-employed persons engaged in fishing.
55. EIR (Fishing), s. 12.
56. Canada Employment Insurance Commission (2009), Chapter 2, Table 2, p. 19.
57. EIA, s. 24.
58. The usual maximum duration is 26 weeks but this can be extended up to 38 weeks for exceptional circumstances. Also, the maximum length of agreements was increased to 52 weeks for agreements commencing prior to 4 April 2010. (Source: Service Canada, [\*Work-Sharing Program: Applicant Guide\*](#), March 2010.)
59. Canada Employment Insurance Commission (2008), Chapter 2, Section I, EI Clients, and 2009, p. 21.
60. EIA, subsections 12(3), 12(5) and 12(6).
61. Terms and conditions for teachers are set out in section 33 of the EIR.
62. Pilot Project No. 14 ended in May 2010; it was established to assess whether increasing the number of weeks of benefits paid to a person taking long-term training encourages the claimant to pursue such training.

63. EIA, Part V, and EIR, ss. 77.7 to 77.9.
64. Canada News Centre, "[Employment Insurance pilot projects continue to support unemployed Canadians](#)," News release, 12 October 2010.
65. Part VI of the EIA contains administrative provisions for the Employment Insurance program, in particular appeals of decisions. The 30-day period during which claimants or employers may appeal a decision may be extended for special circumstances, at the Commission's discretion.
66. For more details on the Boards of Referees, see Service Canada, [Information Handbook for Employment Insurance Boards of Referees](#).
67. This 60-day period may be extended under special circumstances, at the Umpire's discretion.
68. For more details, see Canada Employment Insurance Commission (2009), Chapter 3.
69. Ibid., p. 28.
70. Canada Employment Insurance Commission (2009), Chapter 2, Table 2, p. 19.
71. Pursuant to section 25 of the EIA, apprentices can receive employment benefits while taking training.
72. In its [Fourteenth Report](#) of the 40<sup>th</sup> Parliament concerning Bill C-56, the Standing Senate Committee on National Finance noted as follows:

The committee has heard from an expert witness that the premium rate proposed (1.36/\$100 as compared to 1.73/\$10 for the rest of Canada) in Bill C-56 for Quebec self-employed workers might be too high relative to the expected cost of the benefits to which they are entitled.

The committee therefore believes that the government should consider setting up, at the earliest possible time, an independent working group that would further examine the issue of the premium rate for Quebec self-employed workers to determine whether it is set at a fair level.
73. EIA, subsection 96(1).
74. EIA, subsections 96(4) and 96(5). If the insurable earnings exceed \$2,000 only by an amount equal to or less than the premiums paid, the person is refunded in part, i.e., total premiums paid minus the portion paid on insurable earnings over \$2,000.
75. EIA, s. 69 and EIR, ss. 68 to 76. The portion of 5/12 is equal to the employee portion of premiums paid by employers and employees.
76. See Kevin B. Kerr, [Employment Insurance Premiums: In Search of a Genuine Rate-Setting Process](#), Publication no. 03-41E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 February 2009.
77. According to new paragraph 66(2)(b) of the EIA, the premium rate must be based on "any difference, accumulated after December 31, 2008" between the program's expenditures and revenues.
78. EIA, ss. 65.3 and 66.
79. Danforth (2010), Table 2, p. 3.
80. Service Canada, [Employment Insurance Premium Rate](#).
81. Canada News Centre, "[Government of Canada Takes Action to Limit the Employment Insurance Premium Increase for 2011 to Five Cents](#)."

## APPENDIX: MAXIMUM NUMBER OF WEEKS OF BENEFITS BASED ON HOURS OF INSURABLE EMPLOYMENT AND REGIONAL RATE OF UNEMPLOYMENT\*

Table A.1 – Regional Rate of Unemployment <sup>a</sup>												
Number of hours of insurable employment	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
420-454									26	28	30	32
455-489								24	26	28	30	32
490-524							23	25	27	29	31	33
525-559						21	23	25	27	29	31	33
560-594					20	22	24	26	28	30	32	34
595-629				18	20	22	24	26	28	30	32	34
630-664			17	19	21	23	25	27	29	31	33	35
665-699		15	17	19	21	23	25	27	29	31	33	35
700-769	14	16	18	20	22	24	26	28	30	32	34	36
770-839	15	17	19	21	23	25	27	29	31	33	35	37
840-909	16	18	20	22	24	26	28	30	32	34	36	38
910-979	17	19	21	23	25	27	29	31	33	35	37	39
980-1 049	18	20	22	24	26	28	30	32	34	36	38	40
1050-1119	19	21	23	25	27	29	31	33	35	37	39	41
1120-1189	20	22	24	26	28	30	32	34	36	38	40	42
1190-1259	21	23	25	27	29	31	33	35	37	39	41	43
1260-1329	22	24	26	28	30	32	34	36	38	40	42	44
1330-1399	23	25	27	29	31	33	35	37	39	41	43	45
1400-1434	24	26	28	30	32	34	36	38	40	42	44	45
1435-1469	25	27	29	31	33	35	37	39	41	43	45	45
1470-1504	26	28	30	32	34	36	38	40	42	44	45	45
1505-1539	27	29	31	33	35	37	39	41	43	45	45	45
1540-1574	28	30	32	34	36	38	40	42	44	45	45	45
1575-1609	29	31	33	35	37	39	41	43	45	45	45	45
1610-1644	30	32	34	36	38	40	42	44	45	45	45	45
1645-1679	31	33	35	37	39	41	43	45	45	45	45	45
1680-1714	32	34	36	38	40	42	44	45	45	45	45	45
1715-1749	33	35	37	39	41	43	45	45	45	45	45	45
1750-1784	34	36	38	40	42	44	45	45	45	45	45	45
1785-1819	35	37	39	41	43	45	45	45	45	45	45	45
1820 +	36	38	40	42	44	45	45	45	45	45	45	45

a. This table does not include the five additional weeks in effect temporarily in 2009–2010.

### NOTES

\* Source: [Employment Insurance Act](#), S.C. 1996, c. 23, Schedule I.