

## Retroactive Salary and Employment Insurance

### 1) Is the employer obliged to impose employment insurance contributions on a retroactive salary payment?

Yes, the total gross amount of retroactivity (except for interest payments) is subject to salary insurance contributions at the rate set during the year it is paid out, up to the point where the maximum insurable salary of that year has been reached (\$45 900 in 2012), the same as any other employment payment or revenue (article 2 (1) of (article 2 (1) of *Insurable Earnings and Collection of Premiums Regulations*).

### 2) What happens if I am receiving employment insurance payments when I receive my retroactivity?

If a person qualifies for employment insurance payments (regular, disability or compassionate benefits) during the week when retroactivity is paid, **he or she must declare this amount even though there will be no stoppage of payments in progress**. In fact, this revenue is not considered to be salary and does not have the effect of reducing payable benefits (article 35 (7) d) of Employment Insurance Regulations).

### 3) Will employment insurance benefits which I am receiving or which I have received in previous years be recalculated?

#### *a. Individuals working for the same employer from whom they receive retroactivity*

For calculation of the benefit rate of employment insurance, **the gross amount of retroactivity (not counting interest) will be fully attributed to the week when it was paid out** for all people who are working for, or who are on paid leave from (including disability leave), the employer who is paying the retroactivity during that week (article 23 (1) b) of Employment Insurance Regulations). **Retroactivity will therefore have no impact on benefits received while or before it is paid.**

Only benefits resulting from a subsequent application for benefits could possibly be influenced by retroactivity (subject to the 2013 maximum of \$501 per week), should the week in which the retroactivity was paid be included in the base period used to calculate the rate of benefits.

Example 1 :

Retroactive payment:	Week of January 13, 2013 (\$200)
Application for benefits	June 30, 2013
Base period for calculation of benefit rate	From December 30, 2012 to June 29, 2013 (26 weeks)
Regular weekly salary	\$770
Benefit rate <b>without retroactivity</b>	$(26 \text{ weeks} \times \$770) / 26 \times 55 \% = \$423$
Benefit rate <b>with retroactivity</b>	$[(26 \text{ weeks} \times \$770) + \$200] / 26 \times 55 \% = \$427$

*b. Individuals whose employment subject to retroactivity has been terminated (termination of contract, retirement, etc.) or who are on leave without pay (maternity, paternity, or adoption leave) at the moment that retroactivity is paid out*

In these cases, the gross amount of retroactivity will be fully attributed to **the last week in which the individual received a regular salary payment** (article 23 (1.1) of Employment Insurance Regulations). If this week was included in the base period used for calculation of past employment insurance benefit, or for a benefit presently in progress, a recalculation of the rate of benefits might be required, unless the individual involved had already reached the maximum (\$485 per week in 2012). **In fact, this is the only situation where an earlier or present rate of benefit may be recalculated.**

Whatever the case, the employer should automatically issue a revised salary statement which includes the sum of retroactivity in the last week during which a regular salary payment was made. Employment Insurance will proceed automatically to make a retroactive adjustment and **the individual does not have to make a request for this to happen.**

Example 2 :

Period of employment	September 2011 to June 2012
Regular employment insurance benefits	July and August 2012
Retroactivity from April 1 to June 30, 2012	\$50

The retroactive payment will be fully attributed to the last week of June 2012, because this was the last week when the individual received a regular salary payment from the employer. This amount will be shown on the amended salary statement, which the employer issues automatically. Benefits will consequently be revised (subject to the maximum of \$485 a week in 2012).