

This publication is provided as a guide only. It is not intended as a substitute for the *Employer Health Tax Act* and Regulations.

Is a disability benefit amount subject to Employer Health Tax? Before determining if a disability benefit amount is subject to Employer Health Tax (EHT), the following conditions must exist:

- an employer-employee relationship
- the employer must have a permanent establishment (PE) in Ontario
- the employer or its agent must pay the disability benefit amount to employees:
 - a. who report for work at a PE in Ontario, or
 - b. who do not report for work at a PE of the employer but who are paid from or through a PE of the employer in Ontario.

Definitions

An employer is generally defined as:

- a person or a government
- a municipality, university, school board, hospital, non-profit organization, charity
- an incorporated company
- a trust, partnership, or an unincorporated association

that pays remuneration to an employee.

An employee is an individual who:

- is employed by an employer
- holds office from an employer and receives remuneration for carrying out the duties of the office
- was formerly an employee in any of the ways outlined above.

Permanent establishment is any fixed place of business where day-to-day business activities are carried out. It includes an office, agency, branch, factory, farm, gas well, mine, oil well, timberland, warehouse or workshop.

What ways are disability benefits paid out?

Disability benefits can be paid in one of the following ways:

- paid directly by the employer to the employee
- paid by a third party administrator acting on behalf of the employer under the terms of an administrative services only (ASO) arrangement
- paid by an insurer to an individual on a periodic basis under the terms of an insurance contract
- paid by an independent third party trustee to an individual.

Tax Treatment

Circumstances	Tax Treatment	Reasoning
Benefits paid directly by employer to employee	Benefits subject to EHT	If the disability is taxable for federal income tax purposes then the benefit is subject to EHT.
Benefits paid by insurance company (or other third party) under ASO arrangement.	Benefits subject to EHT	A disability benefit paid by a third party administrator acting on behalf of the employer under the terms of an ASO arrangement is also subject to EHT. The third-party administrator handles the disability benefit payments on the employer's behalf. The employer remains liable for payment of the benefit to the employee and therefore, the disability benefit is subject to EHT.
Benefits paid by insurance company under terms of insurance contract.	Benefits not subject to EHT *	A disability benefit paid by an insurer, under an insurance contract between the employer and the insurance company, is not subject to EHT. The insurer, not the employer, is liable for payment of the benefits, and there is no employer-employee relationship between the payer (insurer) and the insured employees, therefore, the disability benefit is not subject to EHT.
Benefits paid by independent third party trustee.	Benefits not subject to EHT *	A disability benefit paid by an independent third party trustee is not subject to EHT as the trust is liable for payment of the benefit and there is no employer-employee relationship between the trustee and the recipient of the benefit.

* Retail Sales Tax may apply to the premiums paid in respect of insurance contracts or on amounts paid under benefit plans. For more information please contact the Tax Advisory Services Branch, Retail Sales Tax Section.

Written interpretations

To obtain a written interpretation on a specific situation not addressed in this publication, please send your request in writing to:

Ministry of Revenue
 Tax Advisory Services Branch
 Income Tax Related Programs Section
 Employer Health Tax
 33 King Street West, 3rd Floor
 Oshawa ON L1H 8H5

Related publications

Other publications which provide further details on this topic include:

How to Identify an Employer-Employee Relationship
 Permanent Establishment
 Remuneration

More Information

To obtain the most current version of this publication, or additional information, visit our website at ontario.ca/revenue and enter 2656 in the find page field at the bottom of the webpage or contact the Ministry of Revenue at:

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