

Provincial and Territorial Legislation Outside Québec

Learning Objectives:

Upon completion of this chapter, you should be able to:

1. Describe the different methods of funding health care
 - Regular tax based
 - Employer tax or levy
 - Combination of employer and employee tax
2. Identify the health care funding method used in each province and territory
3. Describe how the various funding methods affect organizations and their employees
4. Describe payroll's role in the administration of the various health care funding methods
5. Describe payroll's responsibilities under provincial privacy legislation
6. Describe the Northwest Territories and Nunavut payroll taxes
7. Describe payroll's responsibilities under provincial pension legislation

Communication Objectives:

Upon completion of this chapter, you should be able to:

1. Explain the effect of rate changes, employee provincial and territorial transfers and legislative changes to stakeholders
2. Explain employee and employer responsibilities under provincial privacy, pension and benefits legislation, and the territorial taxes

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Introduction

In addition to compliance with federal legislation, the payroll practitioner must be compliant with provincial/territorial legislation that impacts payroll. In this chapter, we will discuss the provincial/territorial legislation outside of Québec that deals with health care and the various funding methods, privacy, the Northwest Territories and Nunavut payroll tax and pension legislation. Information on Québec legislation will be provided later in the course.

Health Care in Canada

The *Canada Health Act (CHA)* is Canada's federal legislation for publicly-funded health care insurance. The CHA aims to ensure that all eligible residents of Canada have access to necessary hospital and physician services, without having to pay for the services.

Insured persons are eligible residents of a province or territory. A resident of a province is defined in the Act as “a person lawfully entitled to be or to remain in Canada who makes their home and is ordinarily present in the province, but does not include a tourist, a transient or a visitor to the province”. The CHA definition of ‘insured person’ excludes members of the Canadian Forces and persons serving a term of federal imprisonment. The CHA also excludes “a resident of a province who has not completed such minimum period of residence or waiting period, not exceeding three months, as may be required by the province or territory”. The Government of Canada provides coverage to these groups through separate federal programs.

The administration and delivery of health care services is the responsibility of each province or territory, guided by the provisions of the CHA.

Provincial and territorial health care services include insured primary health care, such as the services of physicians and other health professionals, and hospital care. The provinces and territories also provide some residents with supplementary health benefits not covered by the act, such as prescription drugs and paramedical coverage. The level and scope of coverage for these supplementary benefits vary among jurisdictions. Many Canadians also have private insurance coverage through employer-provided group plans which cover the cost of additional supplementary services.

This section of the chapter explains how the method used to fund provincial/territorial health care may impact payroll for organizations that operate in or have employees in, the various jurisdictions across Canada.

Health Care Funding Methods

The provinces and territories fund health care coverage with assistance from the federal government. The federal government assists by making transfer payments that are a combination of personal and corporate income tax transfers and cash contributions. The *Canada Health Act* establishes the criteria and conditions that provincial health insurance plans or extended health care services must meet to receive the full cash contributions under the Canada Health and Social Transfer.

Note:

The five criteria established under the *Canada Health Act* are being provided for your information only (you will not be tested on them).

- A. public administration: the administration of the health care insurance plan of a province or territory must be carried out on a non-profit basis by a public authority
- B. comprehensiveness: all medically necessary services provided by hospitals and doctors must be insured
- C. universality: all insured persons in the province or territory must be entitled to public health insurance coverage on uniform terms and conditions
- D. portability: coverage for insured services must be maintained when an insured person moves or travels within Canada or travels outside the country
- E. accessibility: reasonable access by insured persons to medically necessary hospital and physician services must be unimpeded by financial or other barriers

In addition to the transfer payments from the federal government, which do not cover the full cost of coverage, each province/territory determines the method they will use to fund health care coverage. They may collect premiums or contributions from individuals, impose a tax or levy on employers, impose a tax on employees, or fund health care through their general tax revenues. Additional funds from other financial sources, such as sales taxes and lottery proceeds, are also used by some provinces.

The following chart shows the payroll implications of the method used by each province/territory.

Exhibit 7-1

TYPE OF FUNDING	PROVINCES/ TERRITORIES	PAYROLL IMPLICATION
Regular Tax Based	Alberta, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, Yukon	None
Employer Tax or Levy	British Columbia, Manitoba, Newfoundland and Labrador, Québec	Cost to the employer only
Combination of Employer and Employee Tax	Ontario	Cost to employer and employee

Regular Tax Based

The jurisdictions that fund their health care systems through general tax revenues, rather than through specific employer and/or employee health care premiums, taxes and/or levies are:

- Alberta
- New Brunswick
- Northwest Territories
- Nova Scotia
- Nunavut
- Prince Edward Island
- Saskatchewan
- Yukon

Under this method, there is no implication for payroll, from either the employee or the employer's perspective.

Employer Tax or Levy

The following provinces fund their health care systems through employer taxes or levies. In these provinces, employers are assessed a tax or levy based on a percentage of the payroll paid in the province; there is no cost to the employee for their health care coverage. A levy is money raised under government authority.

British Columbia

The B.C. Employer Health Tax (EHT) came into effect on January 1, 2019. Regular employers in British Columbia with a payroll greater than \$500,000.00 are subject to the EHT. For charities and non-profit employers, the health tax applies to locations with payrolls greater than \$1.5 million. Employers with B.C. remuneration greater than \$500,000 (exemption amount) in a calendar year must register for the employer health tax.

The employer health tax applies to remuneration paid to employees who:

- report to an employer's establishment in British Columbia; or
- are not required to report to work at any permanent establishment of the employer but who are paid from an establishment in British Columbia

Remuneration

The remuneration on which the employer health tax is calculated includes all forms of cash employment income such as salary, wages, overtime pay, commissions, bonuses, vacation pay and statutory holiday pay. Allowances and taxable benefits are also included in the total remuneration.

Generally, the total income from employment amount reported in Box 14 of an employee's T4 slip, when box 10 indicates BC (British Columbia), is subject to the employer health tax.

Tax Rates – Regular Employers

For regular employers, a \$500,000.00 exemption applies to remuneration between \$500,000.00 and \$1.5 million; the tax rate on the non-exempt remuneration is 2.925%. For payrolls over \$1.5 million no exemption is permitted, but a lower tax rate of 1.95% applies. Employers with a payroll of \$500,000.00 or less are exempt from the tax.

For each regular employer with a B.C. payroll:

Exhibit 7-2

REMUNERATION	TAX PAYABLE
\$500,000.00 or less	Exempt
Between \$500,000.00 and \$1.5 million	(Assessable remuneration less \$500,000.00) x 2.925%
Over \$1.5 million	Assessable remuneration x 1.95%

Examples – Regular employers:**Annual B.C. remuneration of \$500,000.00 or less**

Annual B.C. remuneration	\$250,000.00
Taxable B.C. remuneration	\$0.00
Tax payable	\$0.00

Annual B.C. remuneration between \$500,000.01 and \$1.5 million

Annual B.C. remuneration	\$750,000.00
Less exemption amount	<u>- 500,000.00</u>
	\$250,000.00
Taxable B.C. remuneration	\$250,000.00
Tax rate (2.925%)	<u>x 0.02925</u>
Tax payable	\$7,312.50

Annual B.C. remuneration over \$1.5 million

Annual B.C. remuneration	\$1,500,100.00
Less exemption amount	<u>- 0.00</u>
	\$1,500,100.00
Taxable B.C. remuneration	\$1,500,100.00
Tax rate (1.95%)	<u>x 0.0195</u>
Tax payable	\$29,251.95

Tax Rates – Charities and Non-profit Employers

Charitable organizations approved by the Canada Revenue Agency and non-profit associations have a \$1.5 million exemption for each location with remuneration under \$4.5 million and a tax rate of 2.925%. No exemption will be permitted for locations with payrolls over \$4.5 million, however, a lower tax rate of 1.95% will apply. Locations with a payroll of \$1.5 million or less are exempt from the tax.

A non-profit is a club, society or association that is not a charity is organized and is operated solely for:

- Social welfare
- Civic improvement
- Pleasure or recreation
- Any other purpose other than profit

For each location of a charity or non-profit employer with B.C. payroll:

Exhibit 7-3

REMUNERATION	TAX PAYABLE
\$1.5 million or less	Exempt
Between \$1.5 million and \$4.5 million	(Assessable remuneration less \$1,500,000.00) x 2.925%
Over \$4.5 million	Assessable remuneration x 1.95%

Examples – Charities and non-profit employers:**Annual B.C. remuneration of \$1,500,000.00 or less**

Annual B.C. remuneration	\$1,250,000.00
Taxable B.C. remuneration	\$0.00
Tax payable	\$0.00

Annual B.C. remuneration between \$1.5 million and \$4.5 million

Annual B.C. remuneration	\$2,750,000.00
Less exemption amount	<u>- 1,500,000.00</u>
	\$1,250,000.00

Taxable B.C. remuneration	\$1,250,000.00
Tax rate (2.925%)	<u>x 0.02925</u>
Tax payable	\$36,562.50

Annual B.C. remuneration over \$4.5 million

Annual B.C. remuneration	\$5,500,000.00
Less exemption amount	<u>- 0.00</u>
	\$5,500,000.00

Taxable B.C. remuneration	\$5,500,000.00
Tax rate (1.95%)	<u>x 0.0195</u>
Tax payable	\$107,250.00

Remittance due dates

Employers with a BC payroll greater than \$500,000 but less than \$600,000.01 will be required to remit once per annum.

Employers with payrolls greater than \$600,000.01 will be required to remit quarterly. The quarterly instalment payment due dates are:

- June 15
- September 15
- December 15
- March 31 – a final reconciliation

The first three installments will be based on estimates of the payroll using remuneration from the prior year and the final payment in March of the following year will be a ‘true-up’ for the current year.

The annual return will be due on March 31st of every year with the final payment. All employers are required to file an annual return, even if payroll is below the exemption.

The Government of BC provides an online calculator for employers to assist them in determining the amount of health tax on their assessable payroll and the required estimated installments.

Penalties for Non-Compliance

Penalties may be imposed as follows:

- failure to file on time: the total of 5 percent of unpaid tax plus an amount determined by the Act with the fine increasing for repeated offences
- failure to include required information on the return: \$100.00 for each failure
- failure to comply with requirements to produce records and information: greater of \$100.00 and \$25.00 for each day the failure continues to a maximum of \$2,500.00
- knowingly making a false statement or omitting information: greater of \$100.00 and 50 percent of any unreported amounts
- penalty for a person who interferes with inspection or audit is liable to a penalty of \$100 for each contravention
- If an employer fails to pay an instalment on or before the due date, the employer must pay interest on the amount equal to 25% of the lesser of:
 - a) The employer’s tax payable for the preceding calendar year, and
 - b) The employer’s tax payable for the current calendar year

Medical Services Plan (MSP)

The administration of provincial health benefits for BC residents is handled by MSP. Enrollment in the MSP remains mandatory to provide provincially insured health care benefits for eligible BC residents. Employers are asked to facilitate a group plan under MSP to administer account information for employees, such as address changes or updates to dependent information.

Manitoba

Under the *Health and Post-Secondary Education Tax Levy Act*, the Manitoba provincial government funds health care through an employer tax levy, administered by the finance department. An employer's contributions for the tax do not affect an employee's eligibility under the insurance plan.

The act requires employers to pay a payroll-related tax levy. The act applies to employers with a permanent establishment in the province who pay remuneration to:

- employees who report for work at a permanent establishment of the employer in Manitoba and/or
- employees who are not required to report for work at any permanent establishment of the employer (either inside or outside of Manitoba) but who are paid from or through a permanent establishment of the employer in Manitoba

Example:

Halton Industries has employees who report to work at the company's locations in Brandon, Manitoba and 2 customer service representatives in Montréal, Québec who do not report to a permanent establishment. All employees are paid from the Brandon location. The Health and Post-Secondary Education Tax Levy applies to taxable remuneration paid to employees in both provinces.

Example:

Drainger Flooring has employees who report to work at, and are paid from, the company's location in Winnipeg, Manitoba. Drainger also has employees who report to work at, and are paid from, their office in Toronto, Ontario. The Health and Post-Secondary Education Tax Levy would only apply to the taxable remuneration paid to the employees working in Manitoba.

The tax is calculated on the employer's annual gross payroll in the province of Manitoba subject to Sections 5(1), 6 or 7 of the *Income Tax Act*, including salary, wages, bonuses, commissions, taxable benefits and taxable allowances. This is generally the total income from employment reported in box 14 of a T4 slip when box 10 indicates MB (Manitoba).

Exhibit 7-4

HEALTH AND POST-SECONDARY EDUCATION TAX LEVY RATES	
GROSS PAYROLL RANGE	AMOUNT OF LEVY
\$1.5 million or less	Exempt
Between \$1.5 million and \$3 million	4.3% of annual payroll over \$1.5 million
Over \$3 million	2.15% of total annual payroll

Example:

Jarvis Industries, located in Brandon, reports an annual gross Manitoba payroll of \$2.75 million.

Annual gross Manitoba payroll	\$2,750,000.00
Exempt amount	<u>- 1,500,000.00</u>
Amount subject to tax	\$1,250,000.00
Tax rate (4.3%)	<u>x 0.043</u>
Tax owing	\$ 53,750.00

Example:

Lewis Metals, located in Winnipeg, reports an annual gross Manitoba payroll of \$3.75 million.

Annual gross Manitoba payroll	\$3,750,000.00
Amount subject to tax	\$3,750,000.00
Tax rate (2.15%)	<u>x 0.0215</u>
Tax owing	\$ 80,625.00

The \$1.5 million exemption does not apply for payrolls over \$3 million.

An employer must register for the Health and Post-Secondary Education Tax Levy (HE Levy) if the total remuneration paid to employees is more than \$1.5 million per year. Employers can register online at manitoba.ca/TAXcess.

An employer who pays more than \$1.5 million in a year is required to file a monthly return and remit the applicable tax payable. Where an employer's annual payroll is more than \$1.5 million in a year, the return must be filed every month, even if there is zero remuneration for a particular month.

Beginning with the 2021 taxation year, tax returns and tax payments must be completed using TAXcess, the online system as paper returns are no longer accepted. Where an employer's remuneration for the year is greater than \$1.5 million, an HE Levy return must be filed each month including a situation where there is no remuneration for a particular month. In this case enter "0.00" on the online return and file the return by the due date.

Monthly returns are due the 15th day of the month following the month in which remuneration is paid. The return must be received by the Taxation Division no later than 4:30 pm on the due date. If the 15th day of a month is a weekend or public holiday, the due date is the next business day.

Penalties for Non-Compliance

The following are the penalties for non-compliance with the reporting and remitting requirements of the Health and Post-Secondary Education. As per the *Health and Post-Secondary Education Tax Act*:

- an employer who fails to pay the tax incurs a penalty of 10% interest on the balance of tax owing
- an employer who fails to file a return can be fined up to \$200.00 for each day the return is outstanding
- late or insufficient tax remittances on returns are subject to interest from the date that an amount was required to be paid to the date on which it was paid. Outstanding debts will be subject to monthly interest. The interest rate payable is set every January 1 and July 1
- tax remitted on the annual return, that should have been remitted on a previous monthly return, is a debt past due and is subject to interest retroactive to the date it should have been remitted in addition to the 10% penalty

As per Sections 75 and 76 of the *Tax Administration and Miscellaneous Taxes Act*:

- failure to supply information and/or produce records incurs a fine of at least \$300.00 and not more than \$10,000.00 for a first offence and between \$1,000.00 and \$20,000.00 for a second or subsequent offence
- evasion of the payroll tax incurs a minimum fine of \$500.00 and not more than \$10,000.00 for a first offence and between \$2,000.00 and \$20,000.00 for a second and subsequent offence

Newfoundland and Labrador

The province of Newfoundland and Labrador supports its health care system through an employer tax. The *Revenue Administration Act* requires employers who have an establishment in Newfoundland and Labrador and who will pay out remuneration over the allocated exemption in any calendar year to register with the finance department and remit the tax. The Health and Post-Secondary Education Tax (HAPSET) applies to employers who have:

- employees who report for work at the employer's place of business in the province and
- employees who are not required to report for work at the employer's establishment in Newfoundland and Labrador, but who are paid from the employer's place of business in the province

For the tax, an establishment includes an office, agency, branch, factory, warehouse, work site, transportation terminal, workshop, farm, mine, storage area, sawmill, timberland, oil or gas well, refinery or generating station occupied or used during a year or part of a year.

The tax rate, payable by all employers, is 2% of taxable remuneration. Taxable remuneration for Newfoundland and Labrador is the total annual remuneration paid by an employer each calendar year less the allocated exemption of \$1,300,000.00. Total remuneration is all taxable income subject to Sections 5(1), 6 or 7 of the *Income Tax Act*, including salary, wages, bonuses, commissions, shift differentials, and taxable benefits and allowances. This is generally the total income from employment amount reported in box 14 of a T4 slip when box 10 indicates NL (Newfoundland and Labrador). Pension, annuity, retiring allowance and/or superannuation income are excluded from the tax levy.

Corporations that are associated under the federal *Income Tax Act* are considered to be a single employer for HAPSET. Associated employers must complete an allocation agreement and send it to the Tax Administration Division if they want to claim the annual payroll exemption. Contact the Tax Administration Division for more information on associated employer rules.

Employers with total annual remuneration of \$1,300,000.00 or less are exempt from the tax; for employers with total annual remuneration over \$1,300,000.00, the tax is calculated using the following formula:

$$\begin{aligned} \text{Total annual remuneration} - \$1,300,000.00 &= \text{Taxable remuneration} \\ \text{Taxable remuneration} \times 0.02 &= \text{HAPSET} \end{aligned}$$

Once the \$1,300,000.00 exemption has been applied to the total annual remuneration, a rate of 2% is calculated on the taxable remuneration and remitted.

Example:

Clover Industries, located in St. John's, reports a total remuneration of \$2.75 million.

Total remuneration	\$2,750,000.00
Exemption	<u>- 1,300,000.00</u>
Taxable remuneration	\$1,450,000.00
Tax rate (2%)	<u>x .02</u>
Tax owing	\$ 29,000.00

The tax is payable on the 20th of the month following the month in which remuneration is paid. The annual Employer Information Return must be filed by the last day of February in the year following the year to which the payroll information relates.

Penalties for Non-Compliance

There are penalties for non-compliance with the reporting and remitting requirements of the Health and Post-Secondary Education Tax:

- failure to file the Employer Information Return by the required due date may result in a penalty of not less than \$100.00 or more than \$5,000.00
- failure to pay the correct tax at the time required can incur a fine of 10% of the amount of the tax that is unpaid
- a person who is guilty of failure to produce records may incur the following penalties:
 - 1st offence: minimum \$300.00; maximum \$10,000.00; a 90 day prison term or both the fine and imprisonment
 - 2nd offence: minimum \$500.00; maximum \$20,000.00; a 180-day prison term or both the fine and imprisonment
 - 3rd or subsequent offence: minimum \$1,000.00; maximum \$30,000.00 maximum 365 day prison term or both the fine and imprisonment

Québec

Québec funds its health care system through an employer tax which will be discussed in the chapter on Québec legislation.

Combination of Employer and Employee Tax

Ontario

Ontario funds its health care using two methods:

- employer tax (Employer Health Tax)
- employee tax (Ontario Health Premium)

Employer Health Tax

The Employer Health Tax (EHT) is administered by the Ontario Ministry of Finance. The tax, which took effect January 1, 1990, is paid by all employers who pay remuneration to:

- employees who report for work at a permanent establishment in Ontario
- employees who do not report for work at a permanent establishment, but who are paid from or through a permanent establishment of the employer in Ontario

A permanent establishment in Ontario generally includes any fixed place of business (such as an office, agency, branch, factory, farm, warehouse, or workshop) where day-to-day business activities are carried out. For further details, please refer to EHT Information Bulletin 1-97 (revised) entitled *Permanent Establishment*.

Employers who are unsure if they have a permanent establishment in the province or if they are required to register should contact the local Ministry of Finance office for further details. Employers may also refer to the *Guide for Employers* – 2436 for further details about the EHT.

The EHT is calculated on the employer's gross total Ontario remuneration. This remuneration includes all taxable income subject to Sections 5(1), 6 or 7 of the *Income Tax Act*, including any salary, wages, bonuses, commissions, taxable benefits and allowances, legislated wages in lieu of notice, vacation pay, and directors' fees. This would generally be the total income from employment amount reported in box 14 of an employee's T4 slip, when box 10 indicates ON (Ontario), as well as employer contributions to an employee profit sharing plan (EPSP).

Certain employers are eligible for an EHT exemption. For these eligible employers, the first \$1,000,000.00 of gross total Ontario remuneration is exempt from the EHT. In general, public-sector employers do not qualify for the exemption. The amount of a private sector employer's annual Ontario payroll will determine eligibility for the exemption.

Employers eligible for the \$1,000,000.00 exemption are those who are:

- in the private sector with an annual Ontario payroll of \$5 million or less
- organizations that receive financial assistance from any level of government but are not under the control of government
- registered charities
- Crown corporations subject to tax under Part I of the *Income Tax Act*

Employers not eligible for the \$1,000,000.00 exemption are:

- private sector employers with an annual Ontario payroll of over \$5 million
- public sector employers, including federal, provincial and municipal governments, universities, colleges, school boards and hospitals
- Crown agencies not subject to tax under Part I of the *Income Tax Act*
- municipal and provincial corporations and certain trusts

The EHT rate to apply is based on the employer's **gross total Ontario remuneration**, which is the remuneration *before* the exemption is deducted. The EHT rate will then be applied to the employer's **taxable total Ontario remuneration**, which is the remuneration *after* the exemption is deducted.

Chapter 7

Provincial and Territorial Legislation Outside Québec

The following table sets out the EHT rates which are based on the employer's annual gross total Ontario remuneration.

Exhibit 7-5

ANNUAL GROSS TOTAL ONTARIO REMUNERATION (PRE-EXEMPTION)	EMPLOYER HEALTH TAX RATE
Up to \$200,000.00	.98%
\$200,000.01 - \$230,000.00	1.101%
\$230,000.01 - \$260,000.00	1.223%
\$260,000.01 - \$290,000.00	1.344%
\$290,000.01 - \$320,000.00	1.465%
\$320,000.01 - \$350,000.00	1.586%
\$350,000.01 - \$380,000.00	1.708%
\$380,000.01 - \$400,000.00	1.829%
Over \$400,000	1.95%

Non-eligible employers with annual gross total Ontario remuneration of \$400,000.00 or less, will pay a rate as per the table provided above. Non-eligible employers with an annual gross total Ontario remuneration over \$ 400,000.00 will pay 1.95%.

Eligible employers with an annual gross total Ontario remuneration of \$ 1,000,000.00 or less will have no taxable total Ontario remuneration once the exemption is deducted.

Examples – Eligible employers:

Annual gross total Ontario remuneration over \$1,000,000.00

Annual gross total Ontario remuneration	\$1,550,000.00
Less exemption amount	<u>-1,000,000.00</u>
Taxable total Ontario remuneration	\$ 550,000.00
Tax rate (based on annual gross total Ontario remuneration)	1.95%
Taxable total Ontario remuneration	\$550,000.00
Tax rate (1.95%)	<u>x 0.0195</u>
Tax payable	\$ 10,725.00

Annual gross total Ontario remuneration of less than \$1,000,000

Annual gross total Ontario remuneration	\$350,000.00
Less exemption amount	<u>-1,000,000.00</u>
	-650,000.00
Taxable total Ontario remuneration	0.00
Tax rate (based on annual gross total Ontario remuneration)	1.586%
Taxable total Ontario remuneration	\$0.00
Tax rate (1.586%)	<u>x 0.01586</u>
Tax payable	\$ 0.00

Examples: Non-eligible employers**Annual gross total Ontario remuneration over \$1,000,000.00**

Annual gross total Ontario remuneration	\$1,550,000.00
Tax rate (based on annual gross total Ontario remuneration)	1.95%
Taxable total Ontario remuneration	\$1,550,000.00
Tax rate (1.95%)	<u>x 0.0195</u>
Tax payable	\$ 30,225.00

Annual gross total Ontario remuneration less than \$1,000,000

Annual gross total Ontario remuneration	\$350,000.00
Tax rate (based on annual gross total Ontario remuneration)	1.586%
Taxable total Ontario remuneration	\$350,000.00
Tax rate (1.586%)	<u>x 0.01586</u>
Tax payable	\$ 5,551.00

It is the employer's responsibility to contact a Ministry of Finance tax office when its annual gross total Ontario remuneration exceeds the exemption amount of \$1,000,000.00 for the first time.

Remuneration Included

In addition to income from employment, certain amounts have been legislated as included in gross total Ontario remuneration for the EHT.

Employers are required to include in their calculation of taxable total Ontario remuneration for the year, remuneration paid in the year to former employees which are taxable under Sections 5(1), 6 or 7 under the *Income Tax Act*. For example, taxable benefits provided to retired employees should be included even though they are reported on a T4A slip. The payments must be included regardless of whether the amounts were paid before or after an employee stopped working for the employer.

Employers are also required to include in their total Ontario remuneration the amount of stock option benefits former employees receive in the year for shares of the employer or of a corporation with which the employer does not deal at arm's length.

Employers are required to pay the EHT on amounts a third party pays to an employee if all of the conditions listed below apply:

- the third party pays the amount to the employee for providing a service in Ontario to a person other than the employer
- the service is 'substantially similar' to the employment functions the employee carries out for the employer in the normal course of their employment
- at the time the employee provides the service, they are an employee of the employer
- it is reasonable to believe that the employee would not have been engaged to provide the service if they were not an employee of the employer
- the employer does not pay the employee any reasonable amount of remuneration or other compensation for providing the service for the third party
- the amount the third party pays is not otherwise included in the employer's total Ontario remuneration paid for the year

The remuneration the third party pays the employee is considered to be paid by the employer in the same month or quarter (as applicable) in which the third party paid it to the employee.

Example:

The Ministry provides the following example of a third party payment subject to the EHT.

An off-duty police officer is engaged by a third party for traffic or crowd control at a sporting event. The third party pays the police officer directly for the work. The officer's employer (the police force) would be required to pay the EHT on the remuneration the third party paid to the police officer. For this reason, the police force may not permit their officers to accept third party employment as the force is responsible for the EHT payment on the third party payment.

Remuneration Excluded

- Pension, annuity, retiring allowance, superannuation paid by an employer to a retired employee, and non-taxable awards from the Workplace Safety and Insurance Board are examples of amounts that are not subject to the EHT.
- Remuneration paid to native people working for a corporation that is located on a reserve is not subject to the EHT.

Penalties for Non-Compliance

Employers with an Ontario payroll of over \$1.2 million are required to make monthly installments, due on the 15th of the following month in which the remuneration is paid.

An employer who does not send in an Annual Return by the due date may be charged a first time penalty of 5% of the unpaid tax if the amount owing is \$1,000.00 or more, plus 1% of the amount owing multiplied by the number of complete months, to a maximum of 12, from the date the return is due to the date the return is received by the Minister of Finance. (Repeated failures increase to 10% + 2% of the amount owing).

Note:

On March 25, 2020, the Ontario government announced relief measures to help support Ontario businesses. These include increasing the Employer Health Tax exemption for 2020 from \$490,000 to \$1 million.

On December 8, 2020, the Employer Health Tax (EHT) exemption increase from \$490,000 to \$1 million became permanent.

Ontario Health Premium

The Ontario Government introduced legislation in 2004 to implement an Ontario Health Premium. The premium is based on annual taxable income over \$20,000.00 and is essentially a tax, not a premium, and is unrelated to eligibility for health care services. Individuals with income below \$20,000.00 will pay nothing. Individuals with income greater than \$20,000.00 will pay a graduated amount of up to \$900.00 per year based on their taxable income.

The Ontario Health Premium is collected through the provincial income tax system and increases as taxable income rises. The actual amount of the premium for the year will be determined when an Ontario resident files their annual income tax return.

To simplify compliance for premium payers and minimize administrative expenses, the health premium is implemented through the *Income Tax Act* and administered and collected by the Canada Revenue Agency (CRA) on behalf of Ontario.

The health premium is a tax on individuals paid through statutory withholdings rather than an employee deduction or an employer-paid premium.

Although it might be possible for employees to negotiate with their employers to be reimbursed for the premium as part of their compensation, the reimbursement amount would then be considered a cash taxable benefit to the employee and would be subject to Canada Pension Plan contributions, Employment Insurance premiums as well as federal and provincial income tax withholdings.

Content Review

- The provinces and territories use the following methods to fund health care:
 - Regular tax based
 - Alberta
 - New Brunswick
 - Northwest Territories
 - Nova Scotia
 - Nunavut
 - Prince Edward Island
 - Saskatchewan
 - Yukon
 - Employer tax or levy
 - British Columbia
 - Manitoba
 - Newfoundland and Labrador
 - Québec
 - Combination of employer and employee tax
 - Ontario
- When health care is funded through general tax revenues, there is no implication for payroll.
- When health care is funded through paid premiums, any portion an employer pays on behalf of their employees or retired employees is considered a taxable benefit to the employee.
- When health care is funded through employer taxes or levies, the employers are assessed based on a percentage of the payroll paid from the province.
- The Ontario Health Premium is a tax based on individuals' annual taxable income and is collected through the provincial income tax system.

Review Questions

1. State three ways the provincial/territorial health care plans are funded.

2. True or False. Health care premiums paid by the employer on behalf of an employee provide the employee with a tax-free benefit.

3. Which of the following jurisdictions funds its health care out of general tax revenues?
 - a. British Columbia
 - b. Ontario
 - c. Prince Edward Island
 - d. Manitoba

4. List three jurisdictions that fund their health care totally or partially through an employer tax or levy.

5. Where health care is funded through an employer tax or levy, similar criteria are used in determining which employers it applies to. Provide the criteria.

6. What method is used to fund British Columbia's health care?

7. What are the two methods used to fund Ontario's health care?

8. List two types of remuneration that are not subject to the Ontario Employer Health Tax (EHT).

Provincial Privacy Legislation

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) discussed earlier in this course applies to employee personal information only where employees work for federal works, undertakings and businesses or, in other words, the federally regulated private sector. *PIPEDA* does not extend to employee personal information outside of the federally regulated private sector. For this information to be subject to legal privacy protections, a provincial law must exist.

To date, only three provinces have introduced their own privacy bills to coincide with the federal legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA). These jurisdictions, Alberta, British Columbia, and Québec, have enacted laws that extend to the provincially regulated workforce in their respective provinces. These laws apply to all personal information collected by businesses located in these provinces. All provincial privacy acts allow for the disclosure of information to a government body that authorizes or requires the collection of information.

Some provinces, such as British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, have passed general privacy legislation that primarily outlines in writing the common law right to sue for invasion of privacy. Actions such as eavesdropping, video or other surveillance as well as unauthorized use of personal information would be considered violations of an individual's privacy and may result in legal actions being filed for damages.

Note:

In September 2013, Manitoba's Bill 211 – *The Personal Information Protection and Identity Theft Prevention Act*, received Royal Assent and will come into force upon proclamation on a date which had yet to be announced at the time this material was printed.

Alberta

Bill 44, *Personal Information Protection Act* (PIPA), received Royal Assent on December 4, 2003 and came into force on January 1, 2004. The PIPA Regulation has undergone some amendments for the following statutes and regulations: Miscellaneous Correction Regulation (A.R. 108/2004), s. 27 (Eff. June 9, 2004) Personal Information Protection Act Amendment Regulation (A.R. 51/2010) (Eff. May 1, 2010).

This act applies to all organizations including corporations, unincorporated associations, trade unions, partnerships and individuals running their own businesses.

Sections 15, 18 and 21 of the *Personal Information Protection Act* (PIPA) allow for the collection, use and disclosure of employee personal information without an employee's or potential employee's consent if the information is reasonably required for the purpose of establishing, managing or terminating an employment relationship.

The usage of the terminology of “reasonably required for the purpose of establishing, managing, or terminating an employment relationship” does not provide an employee or a prospective employee with any control over their information, as the employee or potential employee would have no way of knowing what information, if any, is collected, used and/or disclosed, or the reason for that disclosure.

British Columbia

Bill 38, *Personal Information Protection Act* (PIPA), received Royal Assent on October 23, 2003 and came into force on January 1, 2004.

The British Columbia legislation applies to all organizations. The act applies to the use and disclosure of personal information but does not apply to the collection of that personal information, including employee personal information, that was collected before January 1, 2004.

Sections 13, 16 and 19 of the British Columbia act specifically allow for the collection, use and disclosure of employee personal information without consent if it is reasonably required for the purpose of establishing, managing or terminating an employment relationship. However, British Columbia requires that an organization inform individuals that it will be collecting, using or disclosing employee personal information and the reason it is doing so, except if it is required or authorized by law. For example, in a letter of offer, or employee handbook, the employer can state they will be collecting, using and disclosing employee personal information for the purpose of enrolling and maintaining the employee in certain benefit programs (will be doing it and why), but the employer does not have to obtain their consent to do so. For prospective employees and job applicants, the legislation specifies that if a job applicant is not hired, the personal information collected about that person must either be disposed of or returned to the individual in question, unless that person provides consent and allows the prospective employer to keep the information.

The difference between Alberta and British Columbia’s legislation is that British Columbia employees are provided with a certain degree of knowledge as to what type of data is being collected, used and/or disclosed along with the reasons for it.

Québec

In the province of Québec, *An Act respecting the protection of personal information in the private sector* has been in place since 1994 and is discussed in the chapter on Québec legislation.

Content Review

- Alberta, British Columbia, and Québec have enacted laws that extend to the provincially regulated workforce in their respective provinces.
- Alberta's *Personal Information Protection Act* (PIPA) allows for the collection, use and disclosure of employee personal information without an employee's or potential employee's consent if the information is reasonably required for the purpose of establishing, managing or terminating an employment relationship.
- British Columbia's *Personal Information Protection Act* (PIPA) requires that an organization inform individuals that it will be collecting, using or disclosing employee personal information and the reason it is doing so, except if it is required or authorized by law.

9. Which three provinces have enacted privacy legislation?

10. Under what circumstances does an Alberta employer not need to obtain an employee's consent to collect, use and disclose their personal information?

11. If a job applicant in British Columbia is not hired, what must the prospective employer do with the personal information collected on the applicant?

Northwest Territories/Nunavut Payroll Taxes

All employers with one or more employees working in the Northwest Territories (NWT) and/or Nunavut (NU) are required to collect a 2% payroll tax on the employee's remuneration. This tax also applies to employers not resident in the Northwest Territories or Nunavut who pay employees for services performed in the Northwest Territories or Nunavut.

Remuneration under this tax is defined as any amount included in income under sections 5 (1), 6, or 7 of the federal *Income Tax Act*. This would include any remuneration from employment income, allowances, and taxable benefits.

Who Must Register?

Employers are required to be registered within 21 days of their first pay cycle with employees working in the Northwest Territories or Nunavut. Employers who do not register, deduct or remit as required may be assessed a penalty and interest or be prosecuted.

Northwest Territories

All employees who work in the NWT, regardless of where they live, are subject to the NWT payroll tax on their employment income earned in the NWT. An individual that normally works in the NWT (more than 50% of the time) is subject to the 2% tax on **all** employment income in the year, even if a portion is earned in another jurisdiction.

The 2% tax applies to all income earned including:

- salaries and wages, bonuses, gratuities
- commissions and honoraria
- vacation travel assistance
- employee stock options
- value of allowances and benefits taxable under the federal Income Tax Act
- contributions by employers to registered retirement savings plans (RRSP)
- retiring allowances or severance pay

An employee is not liable to pay the 2% tax where:

- a) the employee normally works, performs duties or provides services outside the Territories for that employer; and
- b) the remuneration paid to the employee in the year by that employer does not exceed the prescribed amount (\$5,000.00).

Employers are required to withhold the NWT payroll tax from the employee's gross pay and remit it to the government. The deduction amount is shown on the pay advice. The payroll tax deduction does not appear on the T4 slip.

Nunavut

No tax is payable by an employee who normally works outside of Nunavut and does not earn more than \$5,000.00 in Nunavut. If an employee earns more than \$5,000.00 in a calendar year in Nunavut, 2% tax is payable on the full amount of remuneration earned while in Nunavut.

If an employee normally works in Nunavut, 2% tax is payable on the full amount of remuneration paid to the employee both in and out of Nunavut.

An employee is considered to normally work in Nunavut if the employee works, performs duties or provides services in Nunavut for more than half of the number of days worked for an employer in the year.

The 2% tax applies to all income earned including:

- salaries and wages, bonuses, gratuities
- commissions and honoraria
- vacation travel assistance
- employee stock options
- value of allowances and benefits taxable under the federal Income Tax Act
- contributions by employers to registered retirement savings plans (RRSP)
- retiring allowances or severance pay

An employer must withhold payroll tax from an employee who normally works outside Nunavut when it can reasonably be determined that the \$5,000 threshold for the year will be exceeded.

Example:

An employee is paid for 1,500 hours working on a project in Alberta over 6 months and earns a total of \$48,000.00. This employee then works on a project, for the same employer, in the Northwest Territories (NT) for 5 months. The NT project takes 1,600 hours for which the employee is remunerated \$52,000.00.

Because more than half of the 3,100 hours worked were performed in the NT, the entire \$100,000.00 would be subject to the 2% payroll tax for a total of \$2,000.00.

Note:

Province of residence has no bearing on the calculation of this payroll tax – the liability for payroll tax occurs when income is earned in the Northwest Territories/Nunavut.

Exempted Employment and Earnings

There are certain types of employment and types of earnings that are not subject to the payroll tax in the Northwest Territories and Nunavut; some examples include:

- Remuneration paid to individuals who are in a religious order and who have taken a vow of poverty that qualifies under the federal *Income Tax Act* is not subject to the tax
- Employees who normally work outside Nunavut (that is, work, perform duties or provide services outside Nunavut for more than half of the number of days worked for an employer in the year) and who do not earn more than \$5,000.00 a year in the territory are also exempted from paying the tax
- If an employer has not withheld tax for an extended period for an employee normally working outside the Northwest Territories/Nunavut and if withholding the amount due in one lump sum would cause ‘extreme hardship’ for the employee, the employee may apply to arrange for withholdings to be made over several pay periods

Content Review

- The Northwest Territories and Nunavut impose a payroll tax on employees' remuneration.
- Employees that “normally” work in the NWT (more than 50% of the time in a year for the same employer), are subject to payroll tax on all employment earnings for the year.
- If an employee earns more than \$5,000.00 in a calendar year in Nunavut, 2% tax is payable on the full amount of remuneration earned while in Nunavut.
- If an employee normally works in Nunavut (more than 50% of the time in a year for the same employer), 2% tax is payable on the full amount of remuneration paid to the employee both in and out of Nunavut.

12. True or False. The Northwest Territories payroll tax applies to an individual that normally works in the NWT.

13. True or False. If an employee who normally works outside of Nunavut is working the same number of days and weeks per month earned \$30,000.00 from January to September in Alberta and earned \$10,000.00 from October to December in Nunavut during the same year for the same employer, the employee would be subject to the Nunavut payroll tax on \$10,000.00.

Provincial Pension Legislation

In addition to having to register a pension plan with the Canada Revenue Agency (CRA), there is provincial/territorial legislation that governs pension plans. The provinces/territories have enacted legislation designed to protect employee rights to promised benefits and to ensure that employees understand their entitlements. The legislation deals with setting minimum standards of eligibility for pension plans, membership, vesting, locking-in, portability, death benefits, inflation protection, surplus issues, acceptable funding methods, information disclosure to members and filing requirements. Further information on pension plans and the terminology used will be discussed in the *Payroll Fundamentals 2* course material.

In many organizations, the responsibility for pension plan administration falls outside the day-to-day scope of the payroll practitioner. There may be a specific pension department within the organization and there may be an actuary or other third party who is responsible for the support of the plan. Regardless, payroll and pensions are linked and the payroll professional is responsible for providing pension-related payroll information to the pension plan administrator.

The areas in provincial/territorial legislation that primarily impact payroll are:

- eligibility and membership requirements
- contribution requirements
- employee and employer contribution remittance deadlines

Eligibility and membership requirements will determine when the employee will (or may) become a member of the employer's pension plan. Once an employee becomes a member, pension credits begin to accumulate. In a contributory setting, where the member can contribute to the plan, the membership date will impact when the employee can start their contributions.

The details of the pension plan document contain the information that will ultimately determine the employee's retirement benefits. Within this section of the document, the pensionable earnings that relate to the organization's specific pension plan are defined in detail. These pensionable earnings must be communicated to the pension plan administrator as well as the payroll department for proper calculation of the employee's pension entitlement.

Each jurisdiction has legislated deadlines for remitting the employer and employee pension contributions. The plan may or may not allow for employee contributions.

Example:

In Ontario, employee contributions must be remitted to the pension plan no later than 30 days following the month in which the deduction was made. Employer contributions must be remitted 30 days after the end of the month for which the contributions are payable.

Payroll practitioners should obtain a copy of their organization's pension plan document to ensure compliance with legislation.

Certain jurisdictions have enacted legislation for pooled registered pension plans (PRPP) that deals with plan registration and administration, employer responsibilities and rights, members and contributions, investments and plan terminations.

A PRPP is a defined contribution-style plan that is set up and administered by a Canadian institution licensed to act as an administrator. Unlike most workplace registered pension plans, a PRPP is not managed by an employer, but by an administrator.

These plans are optional and are intended to provide employees who do not have access to a workplace pension plan with an alternative to save for retirement.

Content Review

- Provincial/territorial legislation that governs pension plans outlines certain criteria that must be met. The areas in the legislation that primarily impact payroll are:
 - eligibility and membership requirements
 - contribution requirements
 - employee and employer contribution remittance deadlines
- Eligibility and membership requirements will determine when the employee will (or may) become a member of the employer's plan.
- The details of the pension plan document will contain the information that will ultimately determine the employee's retirement benefits.
- Pooled retirement savings plans are optional and are intended to provide employees who do not have access to a workplace pension plan with an alternative to save for retirement.

Review Questions

14. What areas in provincial/territorial pension legislation primarily impact payroll?

Information on Provincial Government Legislation

The following table summarizes the provincial government legislation covered in this course and provides information on employer registration and compliance requirements.

Exhibit 7-7

LEGISLATION	HISTORY	EMPLOYER REGISTRATION	COMPLIANCE RULES
<i>Québec Income Tax Act</i>	Québec administers its own personal income tax system.	Employer registration occurs when a source deduction account is established.	Employers are required to remit on a pre-determined schedule.
Workers' Compensation Acts	Each province and territory has enacted legislation to provide compensation to workers who have sustained personal injury in the course of their employment.	Employers are required to register within their jurisdiction.	Depending on the jurisdiction, earnings to an annual maximum are assessed on a pre-determined basis.
Provincial Pension Acts	These acts establish minimum levels for registered pension plans in areas such as portability and vesting.	Employers must also register their plans with the CRA to obtain maximum tax advantage.	Employers are required to file annual returns.
Provincial Labour/ Employment Standards Acts	Established to provide minimum standards to protect employees' rights.	There is no formal registration under these acts; however, if an employee files a complaint, the agency will investigate and determine any monies owing.	Rules vary from province to province. The appropriate act should be consulted.
Privacy	An extension of the federal legislation in British Columbia, Alberta and Québec. These provinces specify legislation governing the collection of employee-specific information.	No registration is required.	Accountability through complaints lodged and potential fines levied.
Pay Equity Legislation	All jurisdictions have some form of pay equity legislation designed to protect wage inequities between men and women in the workforce.	No registration is required.	Pay equity is enforced by a complaint system. A complaint must be filed to trigger enforcement.
Provincial Jury Acts	These acts deal with changes to terms of employment for employees who are required to be jurors.	No registration is required.	Various penalties apply to employers who do not comply.

Chapter Review Questions and Answers

1. State three ways provincial/territorial health care plans are funded.

- **regular tax based**
- **employer tax or levy**
- **combination of employer and employee tax**

2. True or False. Health care premiums paid by the employer on behalf of an employee provide the employee with a tax-free benefit.

False. Health care premiums paid by the employer on behalf of an employee are considered a taxable benefit to the employee and must be included in the employee's gross pensionable and taxable income on a pay period basis.

3. Which of the following jurisdictions funds its health care out of general tax revenues?

- a. British Columbia
- b. Ontario
- c. Prince Edward Island**
- d. Manitoba

4. List three jurisdictions that fund their health care totally or partially through an employer tax or levy.

British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Québec.

5. Where health care is funded through an employer tax levy, similar criteria are used in determining which employers the levy applies to. Provide the criteria.

The levy applies to employers with a permanent establishment in the province who pay remuneration to:

- **employees who report for work at the permanent establishment in the province and**
- **employees who are not required to report for work at any permanent establishment the employer, but are paid from the employer's permanent establishment in the province**

6. What method is used to fund British Columbia's health care?

The British Columbia Employer Health Tax.

7. What are the two methods used to fund Ontario's health care?

The Ontario Employer Health Tax and the Ontario Health Premium.

8. List two types of remuneration that are not subject to the Ontario Employer Health Tax (EHT).

Pension, annuity, retiring allowances, superannuation paid by an employer to a retired employee and non-taxable awards from the Workplace Safety and Insurance Board are not subject to the Employer Health Tax (EHT).

Remuneration paid to native people working for a corporation that is located on a reserve is not subject to the EHT.

9. Which three provinces have enacted privacy legislation?

Alberta, British Columbia and Québec.

10. Under what circumstances does an Alberta employer not need to obtain an employee's consent to collect, use and disclose their personal information?

An Alberta employer can collect, use and disclose employee personal information without the employee's consent when the information is reasonably required for the purpose of establishing, managing or terminating an employment relationship.

11. If a job applicant in British Columbia is not hired, what must the prospective employer do with the personal information collected on the applicant?

If a job applicant is not hired, the personal information collected about that person must either be disposed of or returned to the individual in question, unless that person provides consent and allows the prospective employer the right to keep the information.

12. True or False. The Northwest Territories payroll tax applies to an individual that normally works in the NWT.

True. The individual is subject to the 2% tax on all employment income in the year.

13. True or False. If an employee who normally works outside of Nunavut is working the same number of days and weeks per month earned \$30,000.00 from January to September in Alberta and earned \$10,000.00 from October to December in Nunavut during the same year for the same employer, the employee would be subject to the Nunavut payroll tax on \$10,000.00.

True. Employees who normally work outside of Nunavut (that is, work, perform duties or provide services outside Nunavut for more than half of the number of days worked for an employer in the year) and who do not earn more than \$5,000.00 a year in the territory are also exempted from paying the payroll tax. As this employee earned more than \$5,000.00, the Nunavut earnings are subject to the payroll tax.

14. What areas in provincial/territorial pension legislation primarily impact payroll?

The areas in provincial/territorial pension legislation that primarily impact payroll are:

- **eligibility and membership requirements**
- **contribution requirements**
- **employee and employer contribution remittance deadlines**