



FAQs: MOU Phoenix Damage Agreement

Background:

In June 2019, CAPE negotiated, along with other bargaining agents, [an agreement](#) for members to be given a credit of up to five (5) paid vacation days in recognition of the damages caused by the Phoenix pay system. In addition, during collective bargaining, CAPE negotiated that all members in the EC or TR bargaining units on August 28, 2019 receive a non-pensionable \$400 payment in recognition of the time taken to implement the collective agreement. If those payments were not received by February 25, 2020, each member would be owed an additional \$50, plus another \$50 for each period of ninety (90) days of delay thereafter (limited to \$450 or nine (9) payments total). This limit would be reached on February 14, 2022.

Both agreements included “catch-up” provisions so that, in the event another bargaining agent reached a better settlement on these terms, the Employer would grant those measures to CAPE members as well.

1. What are the latest developments?

The catch-up provisions were triggered by a recent agreement made between the government and PSAC in October 2020, which included an MOA on Phoenix-related damages. Rather than granting vacation credits and the option to take either paid time off or a cash payment, PSAC members received cash payments only. Regardless, CAPE, along with other bargaining agents, engaged the Employer to negotiate an agreement on how to bring our members in line with these new payments. Such an agreement was signed between TBS, CAPE and other bargaining agents on March 5, 2021.

2. What are the provisions in this new deal and what does it mean for me?

The March 5 agreement with TBS has three main benefits for members:

- a) **\$100 FOR LATE IMPLEMENTATION OF RETRO-PAY UNDER THE CURRENT COLLECTIVE AGREEMENT**

- All CAPE members in the EC and TR groups previously received \$400 for the late implementation of retro-pay under the collective agreement signed on August 18, 2019.
- An additional \$100 will be provided to all members in the EC and TR groups to match the amounts received by PSAC members (\$500).
- Members who have yet to receive their retroactive payments will continue to be paid an additional \$50 for each 90-day period beyond the first 180 days after the collective agreement was signed.
- This payment will result in our members receiving the same benefit as was received by PSAC members.

b) \$1,000 FOR THE LATE IMPLEMENTATION OF RETRO-PAY UNDER THE PREVIOUS COLLECTIVE AGREEMENT

- The Employer will compensate all current EC and TR members with a lump-sum payment of \$400 for 2016/2017 and \$200 for each of the 2017/2018, 2018/2019 and 2019/2020 fiscal years for the late implementation of the 2014 collective agreements.
- To be eligible for the compensation, a member needs only to have been “on strength” for one day in the financial year to which a lump-sum payment pertains. The term “on strength” includes employees who were on leave, assignment or otherwise not active.
- Former employees will be eligible, following the submission of a claim and validation by the Employer.
- The date of the payment has not yet been determined; however, we will inform you as soon as it becomes known.
- This payment will result in our members receiving the same benefit as was received by PSAC members.

c) POTENTIAL ADDITIONAL PAYMENT

- All CAPE members in the EC and TR groups previously received a credit of five (5) days of annual leave as compensation for Phoenix damages.
- PSAC members were provided with a lump sum of \$1,500 rather than the five (5) days of annual leave credits (which represents an equivalent of \$300 per day x 5 days).
- Current CAPE members in the EC and TR groups with a daily rate of pay of less than \$300 will be eligible to receive, for each fiscal year for which they have been credited leave or are entitled to be credited leave, any difference between their daily rate of pay and \$300.
- Since most CAPE members are remunerated at a rate higher than \$300 per day, most CAPE members will not be impacted by this adjustment.

3. What action should I take?

Current employees should not have to take any action: they are automatically considered for eligibility, and the Employer has committed to making best efforts to see the payments made, with Treasury Board working to execute payments by Fall 2021. However, we recommend doing your own assessment of the following factors to understand what payment you can expect:

1. Whether you were on payroll for at least one day in the Core Public Administration (CPA) in any of the reference fiscal years from 2016 to 2020.
2. Whether your daily rate of pay was less than \$300 in any of the reference years.
3. Whether you received the one-time \$400 2019 late implementation payment (if you were in the CAPE bargaining unit on August 28, 2019).

Former employees will need to submit a claim to be validated by the Employer if they believe they meet the eligibility criteria described above.

4. How do I know which payments I can expect to receive?

- Eligibility for the 2019 late implementation payment is straightforward: you must have been a member of the EC or TR bargaining unit on August 28, 2019 (the date of signing of the current collective agreement). If you were eligible for the initial \$400 payment, regardless of whether you have received it or not, you qualify for the additional \$100 payment. If you have not received the payment yet, you have been accruing an additional \$50 owed to you since February 25, 2020 and this will continue increasing until you are paid completely.
- Eligibility for the new \$1,000 payment for 2014 late implementation is broken down into four reference periods. If you worked for at least one day that fiscal year in the CPA – whether you were on leave, assignment or otherwise not active – you are eligible for the payment as follows: \$400 for 2016/2017 and \$200 for each of the 2017/2018, 2018/2019 and 2019/2020 fiscal years.
- The top-up for general damages related to Phoenix applies to those who worked in one of the four fiscal years referred to above and at that time had a daily rate of pay of less \$300. For each year, the payment is for the difference between the actual rate of pay and the following amounts: \$300 for each of the 2017/2018, 2018/2019 and 2019/2020 fiscal years. For 2016/2017, since PSAC members received \$600, the payment for eligible CAPE members will be equal to twice the difference between their actual rate of pay and \$300. It should be noted, however, that to receive the payment, the difference must amount to more than \$10 for each of the fiscal years.

5. I am a CAPE member currently, but I was not in the EC or TC bargaining unit on August 28, 2019. I was working in the CPA in a position represented by another bargaining agent. Am I eligible for any of these payments?

If you worked in the CPA in at least one reference year and you were indeterminate or on a term of more than three (3) months as of October 23, 2020, in principle you are eligible for some of these payments. Please refer to the guidance on eligibility.

Keep in mind that built into these agreements are provisions to prevent “double-dipping”: you cannot receive the same payment twice under any one of these categories of payments. Employees eligible under the agreement who may also be eligible under the 2020 PSAC deal, for instance, will only be entitled once to compensation for any given fiscal year.

6. My first year with the federal public service was in 2020. Do I still receive a payment?

If you were on payroll at least one day in 2019-2020, you will receive partial payment for the 2014 late implementation (\$200 for that year). Keep in mind that the payment eligibility is broken down by fiscal year.

7. I have not yet received my \$400 late implementation payment, and I was in the bargaining unit on August 28, 2019.

You can now expect an additional payment of \$100 if you were indeed eligible for the initial \$400. Furthermore, you will continue to accrue an additional \$50 owed to you by the Employer for every 90-day period of delay after February 25, 2020. There is no longer a limit on how much this penalty payment can stack up if the Employer continues to fail to pay.

8. Are any of these payments subject to tax?

Yes, these payments are subject to normal tax withholdings as required under the *Income Tax Act*.

9. I am currently on Long-Term Disability leave. Will I still be paid, or is receiving payment conditional upon returning to work?

Your eligibility for the payment is not based on your current status. However, the processing of payments may be affected by your current payroll status. The exact details of payment processing, such as the pay code, are not yet known. We will keep members informed as soon as we have more information.

10. When can I expect to see these payments made?

The Treasury Board has stated that they are working towards executing these payments by Fall 2021, due to the size and complexity of the payments to be made.

Other questions?

If you have further questions related to the Phoenix damages payment, please contact general@acep-cape.ca and indicate “Phoenix Compensation” in the subject line of your e-mail.