

An Employee's Rights on Insolvency

This information sheet is intended to provide basic information on employees' rights should the employer go into liquidation. These rights will apply when a winding-up order or an administration order has been made. Should this happen and if the employee is owed any monies by the employer then certain debts may be claimed by the employee, subject to maximum limits.

1. Normally, the Administrative Receiver or Liquidator will make the application on behalf of the employees on a specific form to the Department for Business, Innovation and Skills (DBIS). Any payment made comes out of the National Insurance Fund. The Administrative Receiver or Liquidator should go through this process, if needs be, with all the employees.
2. The sums which may be claimed are as follows:
 - up to 8 weeks wages;
 - statutory notice pay;
 - holiday pay for up to 6 weeks holiday due but not taken within the last 12 months; **and**
 - a statutory redundancy payment where the employee has at least 2 years continuous service.

The employee must claim the payment from the employer in order for BIS to be able to make the payment if the employer is unable to do so. The claim must be made to the employer within 6 months of the termination date.

All the above payments are subject to a maximum weekly rate of pay of currently £380.00 per week for each item.

3. There may be a delay before payment of any outstanding sum is received from the National Insurance Fund. This is because payment cannot be made until the Liquidator or Administrative Receiver forwards a statement of what is due to the employee, as mentioned above. If there is an unreasonable delay in producing the statement, then there is a discretion for payment to be made by BIS without such a statement.
4. In addition, certain unpaid contributions due from the employer to any pension scheme may be paid up. In this situation, the application is made by the pension scheme. Again, the contributions paid will be subject to certain maximum amounts.
5. If any employee should be entitled to statutory maternity pay (SMP) or paternity pay (SPP) or adoption pay (SAP) which is not paid by the employer, then she will be entitled to receive payment of SMP/SPP/ SAP from the Fund. Again, the application should be made by the Liquidator or the Administrative Receiver.

Special rules may apply where there is a transfer of an insolvent undertaking (see CIS 11 – TUPE)

This checklist is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.

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