

Redundant through Insolvency

Insolvency

A company can become insolvent in a number of ways, for instance by going into administration or through a voluntary agreement with creditors.

An Insolvency Practitioner is appointed, often by the bank or by major creditors. The role of the Practitioner is to deal with all the company's business including employees' rights. Many Practitioners will have specialist Human Resources staff to deal with employees.

Employees rights

In the case of an employee being made redundant from an on going company, it is the company's responsibility to pay final wages, holiday pay, notice periods and any redundancy pay. In the case of insolvency these payments are made by the state through the Insolvency Service. The Insolvency Practitioner will provide employees with the claim forms.

Employees can claim unpaid wages, holiday pay, notice pay, a basic award for unfair dismissal, reimbursement of fees such as apprenticeships, and redundancy pay after two years service. Payments will be based on the statutory minimum and not on an employees contract. For instance, the maximum weekly wage is £330. Holiday pay and statutory notice pay are calculated on that basis and unpaid wages are paid for a maximum of eight weeks.

Payments

A person made redundant from a continuing business is likely to have had a notice period, possibly a consultation period and a meeting with the company to discuss payments and other issues. On the last day of employment all the necessary payments will be made so the individual's financial situation is clear. That payment is unaffected by claiming JSA or getting a new job.

In the case of insolvency the redundancy may be with immediate effect so that employees do not know what their financial situation is and do not know exactly when it will be clear or be paid. This inevitably adds to the stress of the redundancy. The Insolvency Service deals with 80% of applications within three weeks and 90% in six weeks.

In order to reduce the demands on the public purse, people redundant through insolvency are expected to do everything possible to reduce their financial loss, by signing on and seeking other employment. Any state benefits such as JSA or wages received from a new job are deducted from the final payment. Compensatory notice payments are paid at the end of the period so may not be paid for three months from the redundancy.

Payments not covered by the Insolvency Service

If the sum the Insolvency Service provides does not meet the employees' losses then an application can be made to the insolvency practitioner or the Official Receiver but the full sum is unlikely to be recovered.

The Insolvency Service will not pay where an insolvency is not genuine, but an attempt by a company to get out of liabilities before resuming business. The Insolvency Service assesses each case. If the insolvency is not genuine employees can claim their unpaid wages, holiday pay etc either by going to an Industrial Tribunal within three months, by suing the employer or by petitioning the courts to wind up the company so that you could claim. However, there are costs involved in all these options and legal advice should be sought.

Advice

With a growing number of people being made redundant through insolvency there is a growth in the number of people offering to help vulnerable, redundant employees to complete their claim for a fee or for a percentage of the award. This help is unnecessary. The Insolvency Practitioner and the Insolvency Service are able to provide all the information and advice needed, at no cost.

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