

Guidance for employees affected by an employer's insolvency

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When an employer runs into serious financial trouble the options for its employees are usually limited, with restrictions on the amount of financial compensation available. However, the different kinds of insolvency bring different consequences for employees and sometimes all is not lost. Below, the Withers LLP Employment Group sets out brief answers to some of the questions you may have if this situation affects you – bearing in mind that your own particular contract and relationship with your employer will play a vital role in determining how you are affected.

If I am a UK citizen employed in the UK what rights will I have?

This depends on the kind of insolvency proceedings. In the UK, compulsory liquidation and most instances of company voluntary liquidation mean that all employment contracts are automatically brought to an end.

That is not the case in any other kind of insolvency, such as administration, administrative receivership or company voluntary arrangement, where at least some contracts of employment will be continued, at least in the short term.

What are my rights if my contract has been brought to an end automatically?

If your contract has ended automatically you may have a claim for your notice pay but you will have no claim for unfair dismissal. However the liquidator or receiver may decide to retain some employees in the business and, if this applies to you, you will be offered re-engagement on a new contract.

What is the position if my contract does not end automatically?

If your contract does not end automatically (because, for example, your employer is in administration rather than liquidation) you will continue to be employed by the company and the administrator or other insolvency practitioner will take decisions on behalf of the company. That may include retaining your services, or it may mean making you redundant. If you are made redundant you have a right to be consulted beforehand.

What about money the company owes me?

Employees who are owed money by the company in respect of unpaid salary, holiday pay, benefits, or compensation awarded by employment tribunals or courts, are considered to be creditors of the company. However, they have to take their place in the order of creditors. The best placed creditors are those who have secured their debts over the company's assets, such as banks and mortgage lenders and there is often very little to divide up between remaining creditors once these debts have been paid.

A very limited amount of money (£800 per employee) is guaranteed to employees of an insolvent company. However, this is also subject to there being sufficient funds left over once secured creditors have been paid.

Usually the best prospect for an employee of an insolvent company who is dismissed is to make a claim to the National Insurance Fund. The Fund guarantees certain payments to employees of insolvent companies including up to eight weeks' arrears of pay, up to six weeks' holiday pay, statutory notice pay, unpaid pension contributions, and statutory redundancy payments. Weekly pay is, however, subject to a statutory maximum of £330 per week. You will need to make a claim for this payment, by sending Form RP1 to the appropriate Redundancy Payments Office (part of the Insolvency Service). There is no time limit for claims other than claims for redundancy payments, where the time limit is six months from the redundancy.

What if I have a claim against the employer, for example for discrimination or unfair dismissal?

You will need to take advice if you are in this situation, as your position will depend on the stage your claim has reached and what steps the insolvency practitioner dealing with the company's affairs is taking in relation to claims against the company.

Does it matter whether I am working in London or, for example, New York?

Where you work may have a bearing on which company is actually employing you. However, the starting point will be your actual contract of employment. The rules about which laws apply to a contract are complex. If you are a US citizen working in London or a UK citizen working in the US, various factors will have to be taken into account in working out what rights you may have.

If a US Company is filing for bankruptcy how does that affect me if I work in the UK?

The important questions are which company actually employs you and where you carry out your work. Different companies in a group will be treated differently when there is a crisis and different rules will apply to US and UK companies and to different groups of employees according to where they are actually employed. If you are in this position you will need to take legal advice.

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