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Department for
**Employment
and Learning**
www.delni.gov.uk

ER5 Your rights if your employer is insolvent



May 2010

Introduction

This booklet explains your rights if you have lost your job and your former employer is insolvent and owes you money. The Department for Employment and Learning (the Department) may be able to settle the debts, or part of them, instead of the insolvent employer. The booklet tells you what the Department can pay and gives general information about the statutory redundancy payments scheme under the Employment Rights (Northern Ireland) Order 1996 (the Order). The Redundancy Payments Service's address is given at - [Appendix 2](#).

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described. Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices see - [Appendix 2: Useful addresses](#). The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout. Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres. This booklet, others in the series and related publications are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local Jobs and Benefits office. For information on Jobs and Benefits offices: **FREEPHONE** 0800 353530.

For employees seeking advice there is the employee section of the NIDirect website: www.nidirect.gov.uk/index/employment which provides a single comprehensive source of information for employees about their rights and responsibilities.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English. The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

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What is insolvency

If your employer was a company, it is only insolvent if the company has gone into liquidation, or an administration order has been made against it, or a resolution for its voluntary winding-up has been passed, or it has made a voluntary arrangement approved by the court under the Insolvency (Northern Ireland) Order 1989; or in certain circumstances if a receiver or manager has been appointed or possession of the company's property has been taken under a debenture. If your employer was an individual or a partnership there is only insolvency if the individual or all the partners are bankrupt or have made a composition or arrangement with their creditors. There are also special provisions for where an employer dies. The Order defines the only kinds of insolvency, which count. If your employer simply stops trading, this is not itself insolvency.

Who can qualify for our help

You will receive a payment only if you are or were an employee of the insolvent employer. Self-employed people or members of a partnership do not qualify. Directors may be employees if they work under a contract of employment. This will not be the case if they have a controlling interest in the company or only deal with company policy and go to board meetings in return for fees.

People who cannot claim

You do not need to have worked for your employer for a certain length of time (see section 'Redundancy payments') and there are no age limits but you cannot claim until you have been dismissed, or at all if:

- you are a fisherman paid only by a share in the proceeds of your catch;
- under your contract of employment you normally work outside the European Union, Norway and Iceland; or
- you are a merchant seaman.

What you can claim

The debts you can claim are as follows:

- unpaid wages or salary up to a weekly limit - see section 'Limits on what we can pay' for up to eight weeks.

This payment includes:

- commission;
- overtime;
- guarantee payments;

- statutory payments for time off work; or suspension on medical or maternity grounds;
- any 'protective award' made by an Industrial Tribunal if your employer has failed to inform or consult your representative about a collective redundancy;
- holiday pay, for unused holidays and for holidays actually taken but not paid, up to the weekly limit for up to a total of six weeks. But this only covers holidays for which you were entitled to be paid under your contract of employment during the 12 months before the relevant date - see section 'Limits on what we can pay'. Holiday pay may include holiday carried over from the previous year if your contract of employment allows this;
- compensation for not getting proper statutory notice at a rate up to the weekly limit - see section 'Compensation for not getting notice';
- the basic award rate of compensation for unfair dismissal;
- reasonable reimbursement of apprentices' or articled clerks' fees or premiums (note: although wages, holiday pay and compensation are only covered up to the weekly limits - see section 'Debts over the limits'), we can pay apprentices' or articled clerks' fees or premiums in full); and/or
- you may also be entitled to a statutory redundancy payment direct from us if you meet certain conditions - see section 'Redundancy payments'.

You may claim for someone who has died, as long as you are their personal representative and are legally entitled to act for them.

Limits on what we can pay

Arrangements for payment

When you send the Redundancy Payments Services an application form (or it is sent to us by the employer's representative), we will generally work out the payment you should receive and send it to you direct. The Department will take over your rights in relation to the debt in the insolvency proceedings.

If you owe income tax or national insurance contributions we will take these from the money before sending it to you. There is an upper limit on the amount of a week's pay that we can take into account when we work out your entitlement. The limit is reviewed each year and is *£380 from 1 October 2009 – *subject to annual revision*.

***N. B.** The rate of a week's pay is *subject to annual revision*. The current weekly limit is £380. The limit changes annually in line with the Retail Prices Index (up or down) as appropriate. This means that the rate quoted above can become out of date. This internet guidance will be updated as and when the rates are changed. Alternatively, for the current rates or other recent information on the updated rate of a week's pay contact: **Employment Relations Policy and Legislation on 028 90 257493.**

Payment also depends on whether or not there was entitlement on the 'appropriate date' as defined in the Order. For arrears of pay (except a protective award) or holiday pay, the appropriate date is the date your employer became formally insolvent. For a protective award or the basic award rate of compensation for unfair dismissal, the appropriate date is whichever the latest is of the date:

- a) *your employer became formally insolvent;*
- b) *your employment ended; or*
- c) *on which the award was made.*

For all other debts the relevant date is the later of the date your:

- employer became formally insolvent; or
- employment ended.

Debts over the limits

If you are owed more than we are allowed to pay you, your employer's representative will consider the rest of the debt separately, as part of the insolvency proceedings.

How to apply

For payments other than compensatory notice payment, you should ask your employer's representative (for example the receiver, liquidator or trustee) for an application form (RP1). Fill in the form and send it to the Redundancy Payments Service at [Appendix 2](#) (or employer's representative as directed) as soon as possible after your employment has ended. If you did not get proper notice from your employer a form (IP2) will be sent to you by the Redundancy Payments Service - see [Appendix 2](#), at the end of your notice period. Fill in and return this form as soon as your statutory notice period has ended - see section 'Compensation for not getting notice'.

Compensation for not getting notice

You can claim a compensatory notice payment if your employer is legally insolvent - see section 'What is insolvency' and has not given you the minimum statutory notice i.e. not including any longer notice to which you may have been entitled under your contract of employment. The payment is

governed by the common law on damages, which means that it will be reduced by any income you have received or should have received during what should have been the statutory notice period.

We apply the following principles when working out your compensation:

- the payment must compensate you only for the actual loss you suffered during the statutory notice period. Your loss of earnings will be your wages or salary for that period before tax less;
- any state benefits to which you are entitled or earnings from a new job you have received or are owed for the notice period; and
- basic rate tax which you would have paid during the notice period;
- we cannot use tax codes because your employment has ended;
- we will not take off tax if we work out your payment and it appears that you would not have paid tax even if you had worked during the notice period;
- you must keep your loss to a minimum, for example:
- by claiming all the benefits to which you are entitled;
- by doing your best to find a new job; and
- by taking your full wages or salary during the notice period in any new job you find; and
- if you could have reduced your loss but did not, we may reduce your payment by the value of the unclaimed benefits or the amount that you could have earned from the new job.

If you are applying for a compensatory notice payment, you must declare on your application form any earnings you receive for the period covered by your application and the address of the government office at which you claimed benefits. This information will help us work out how much compensatory notice payment you are entitled to. If you do not give us the information we need, your payment could be delayed or we may refuse to pay you.

You must not fill in and return the notice payment application form (IP2) before the end of the notice period you are claiming for.

The statutory minimum periods of notice are:

- *one week if you were continuously employed for one calendar month or more but for less than two years;*

- *one week for each year of employment, if you were continuously employed for two years or more but for less than 12 years; and*
- *12 weeks if you were continuously employed for 12 years or more.*

Occupational pension schemes

If your ex-employer has not paid certain contributions into your occupational pension scheme, the administrator of the scheme may apply to us for these contributions. If the Redundancy Payments Service makes you a payment in respect of arrears of pay from which your employer would normally have deducted pension contributions on your behalf, you may wish to consider forwarding such contributions to the pension scheme yourself. Otherwise, your benefits under the scheme may be affected. You can consult the employer's representative about this.

Redundancy payments

If you were dismissed on grounds of redundancy you may be entitled to a statutory redundancy payment.

The amount of your lump-sum redundancy payment depends on:

- *how long you have been continuously employed by your employer;*
- *how your years of continuous service relate to a particular age band; and*
- *your weekly pay up to a statutory limit.*

The amount of redundancy pay will be calculated as follows:

- 0.5 week's pay for each full year of service where age during the year is less than 22;
- 1.0 week's pay for each full year of service where age during the year is 22 or above, but less than 41; and
- 1.5 weeks' pay for each full year of service where age during the year is 41+.

How to work out your length of service

The maximum number of years' continuous service which can be counted for statutory redundancy payments purposes is 20. We generally count length of continuous service backwards from the 'relevant date' which is usually the date on which the notice given to you ends - normally the date your job or employment contract ends. If your employer gives you less than the legal minimum notice to which you are entitled, the extra notice, which you should have received, is added on. If under your contract of employment you were

entitled to a longer period of notice, and you received this notice but did not work it, the date up to which your continuous service is counted may be later still. Certain absences - for example, caused by sickness, pregnancy or temporary shortage of work - can count towards continuous service even if your contract of employment was suspended. When working out your continuous service for a redundancy payment remember that days lost through industrial disputes do not count (although they do not actually break the continuous service). Any days you were on strike will be taken away from your total length of service.

What 'a week's pay' means

The amount of a week's pay to be taken into account is the amount you are entitled to under the terms of your contract of employment on the 'calculation date'.

This is:

- *the date on which your employer gave you the minimum notice you are legally entitled to; or*
- *the date on which your employer would have had to give you the minimum statutory notice in order to end your employment on the day it actually ended.*

If you had normal working hours and your pay did not change, for example with the amount of work you did, your week's pay is simply your basic weekly wage or salary. Overtime earnings are not included unless overtime was part of your normal working hours. If your earnings changed from one week to another because of piecework or productivity bonus arrangements but you still had normal working hours, your week's pay is worked out by multiplying the number of hours you normally worked in a week by your average hourly earnings over the 12 complete weeks of work before the calculation date. Only hours actually worked are taken into account in calculating this average. If the hours used in the calculation include hours paid at higher rates, the higher rate is ignored and the hours are worked out at the normal basic rate.

If your normal working hours varied from week to week because of shift work, and your earnings varied as a result, a similar calculation is done, but the average hourly earnings are multiplied by the average weekly hours over the same 12 weeks. If you had no normal working hours, your week's pay will be your average weekly earnings in the 12 weeks before the calculation date. If you are not sure read – '**Continuous employment and a weeks pay**' ER8. There is a limit on the amount of a week's pay, which we can take into account in working out your entitlement. The limit is reviewed each year and is *£380 from 1 October 2009 – *subject to annual revision.*

***N. B.** The rate of a week's pay is *subject to annual revision.* The current weekly limit is £380. The limit changes annually in line with the Retail Prices Index (up or down) as appropriate. This means that the rate quoted above can become out of date. This internet guidance will be updated as and when the rates are

changed. Alternatively, for the current rates or other recent information on the updated rate of a week's pay contact: **Employment Relations Policy and Legislation on 028 90 257493.**

Industrial Tribunals

You can complain to an Industrial Tribunal if we have refused you a payment, which you think you should have, or if you think you have received less than you should. You can get an application form (ET1) from the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET) the address of which can be found at Appendix 2. You should return the application form within three months of the date when the payment was refused or not made in full (or six months in the case of a statutory redundancy payment). When you fill in the application form, please write the following in the 'respondent' box:

**Department for Employment and Learning
Redundancy Payments Service**

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

ER 1	<i>Individual rights and responsibilities of employees</i>
ER 2	<i>Written statement of employment particulars</i>
ER 3	<i>Redundancy entitlement statutory rights</i>
ER 4	<i>Redundancy consultation and notification</i>
ER 5	<i>Your rights if your employer is insolvent</i>
ER 6	<i>Unjustifiable discipline by a trade union</i>
ER 7	<i>Time off for public duties</i>
ER 8	<i>Continuous employment and a week's pay</i>
ER 10	<i>Suspension from work on medical or maternity grounds</i>
ER 12	<i>Pay statements: what they must itemise</i>
ER 13	<i>Unfairly dismissed?</i>
ER 14	<i>Guarantee payments</i>
ER 15	<i>Rights to notice and reasons for dismissal</i>
ER 16	<i>Maternity rights: a guide for employers and employees</i>
ER 17	<i>Help with meeting redundancy costs for employers in financial difficulty</i>
ER 18	<i>Dismissal: fair and unfair - a guide for employers</i>
ER 19	<i>Limits on payments and awards</i>
ER 21	<i>Contracts of employment: changes, breach of contract and deductions from wages</i>
ER 22	<i>Criminal records and employment</i>
ER 23	<i>Payment of union subscriptions through "check off"</i>
ER 24	<i>Time off for dependants</i>
ER 25	<i>Parental leave: a guide for employers and employees</i>
ER 26	<i>Time off for study or training</i>

- ER 27** *Industrial action and the law: a guide for employees*
- ER 28** *Trade union executive elections*
- ER 29** *Industrial action and the law: a guide for employers*
- ER 30** *Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action*
- ER 31** *Union membership: rights of members and non-members*
- ER 33** *Trade union political funds*
- ER 34** *Rights to paternity leave and pay*
- ER 35** *Adoptive parents: a guide for employers and employees*
- ER 36** *Flexible working: a guide for employers and employees*

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773
Fax: 028 9023 2271
Textphone: 028 9023 8411
Website: www.nicertoffice.com
E-mail: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956
Freephone: 0800 585 811
Fax: 028 9025 7555
Website: www.redundancyni.gov.uk
E-mail: rpsquery@delni.gov.uk

The Health and Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Textphone: 028 9054 6896
Freephone Helpline: 080 0032 0121
Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580
Website: www.delni.gov.uk/er
E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9050 0589
Website: www.equalityni.org
E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599
Fax: 028 9025 7555
Website: www.industrialcourt.gov.uk
E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NIBusiness Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

**Office of the Industrial Tribunals
and the Fair Employment Tribunal**

Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666

Fax: 028 90250100

Website: www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 902 57493

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk