

A summary of the law on:
**Rights on Insolvency
of Employer**



THOMPSONS NI

If your employer becomes 'insolvent' and stops trading/closes the business (or continues to trade although legally insolvent e.g. 'in administration') and you are dismissed, you are likely to be entitled to a number of payments as set out below:

- Redundancy Payment
- Wages Owed
- Holiday Pay Owed
- Pay in Lieu of Notice

In some circumstances, you may also be entitled to a 'Protective Award' (where more than 20 persons have been made redundant and there has been a failure to properly consult with the union/employees).

In very limited circumstances, you may also be entitled to compensation for Unfair Dismissal and/or Discrimination depending on all of the circumstances of your dismissal.

However getting these payments is not always straightforward. Please note the following:

1. Your potential entitlement to these payments will depend on all of the relevant circumstances including your length of service and whether there was any notice given; and, in relation to a Protective Award, the number of persons made redundant and whether there was any consultation with the union/employees about the insolvency/closure of the business.
2. Even if you are entitled to certain payments, there is no guarantee that you will receive them. Assuming that your ex-employer is not in a position to make these payments, the Redundancy Payments Service (RPS) of the Department of Employment & Learning (DEL) will potentially pay some of these payments up to certain limits and subject to certain conditions.
3. Thus, to receive some of the payments, a successful claim/s to the Industrial Tribunal may be required. For other payments, even with a successful claim to the Tribunal, you may not receive any payment unless further expensive legal proceedings are conducted to 'wind-up' the company.

Is the employer legally insolvent?

This is an important initial issue. Businesses that close or cease trading may often be described as 'insolvent' in the everyday use of this expression (i.e. they don't have enough money to pay their debts).

However, for a business to be considered as legally insolvent, it will have to have gone through some formal legal proceedings e.g. the company has been the subject of an 'administration order'. This has very significant implications for what payments the RPS will make.

What Payments can RPS make?

Subject to the various conditions considered below, RPS may make the following payments (in each case the amount is capped at the statutory rate for a 'week's pay' – currently £430 from 4 March 2012):

- **Statutory Redundancy Payment** – based on age and length of service – must have at least two years service. Maximum of 30 weeks. (See ready reckoner in Appendix 1).
- **Unpaid wages** - up to eight weeks pay.
- **Holiday Pay** - up to six weeks, if owed and accrued within the last 12 months.
- **Statutory Notice Pay** - if the employer failed to give notice of dismissal. The number of weeks is related to length of service - after four weeks there is an entitlement to one weeks notice, from two years onwards it is another week for each year worked, up to a maximum entitlement of 12 weeks after 12 years.
- **Basic Award in any Unfair Dismissal decision** - (but this is not payable where a redundancy payment has been made)
- **Protective Award** - if awarded by Tribunal for failure by employer to consult prior to redundancy – treated as wages and thus subject to eight week maximum and may be reduced by any amount already paid out by RPS as unpaid wages.

How are these payments claimed from RPS?

You should complete a RPI form and return it to RPS as soon as possible after your employment is terminated. Sometimes, if the company has been made legally insolvent (e.g. by being the subject of an administration order), the insolvency practitioners will provide a RPI form and may ask that it is returned to them to pass on to RPS.

However, remember whether or not you get any payments and, if so, which payments, is governed by the various conditions set out below.

In the case of a Protective Award, a payment will only be made if there is an award by an Industrial Tribunal (see below).

In the case of Notice Payments, once a RPI form has been submitted, RPS will send out a further RP2 form once the relevant notice period has ended (see below).

Will DEL pay a Redundancy Payment?

If the company is legally insolvent, RPS will pay the statutory Redundancy Payment.

If the company is not legally insolvent, RPS will only pay the statutory Redundancy Payment if a claim is successfully brought to the Tribunal and RPS is satisfied that the employer cannot pay. If the business has closed, any such claim at the Tribunal is largely a formality and RPS will normally pay up.

If such a claim is necessary, any claim for a Redundancy Payment should be brought to the Tribunal as soon as possible but, in any event, must be brought within six months of the dismissal. It is possible for a number of employees who have been made redundant to bring a general claim which includes them all but this needs to be done carefully and legal advice should be sought.

Any contractual 'enhanced' Redundancy Payment over and above the statutory Redundancy Payment, if proven either to the satisfaction of any administrator or other insolvency practitioner or at a Tribunal, will be treated as an 'unsecured debt' and can only be recovered if the company is wound up through formal legal proceedings. In most cases this is not worth pursuing given the legal costs involved and the fact that there is usually nothing left to distribute in relation to unsecured debts after the 'secured debts' have been paid out e.g. to banks who have a legal charge over company property.

If there is any money left over if the company is ultimately wound up, an employee may receive a payment of, for example, 5p in the £1 on unsecured debts.

Will RPS pay for Wages owed, Holiday Pay owed & Pay in lieu of Notice?

Unlike a Redundancy Payment, RPS will only pay these payments if the employer is legally insolvent, even if the employee has a Tribunal decision.

As it costs up to £3,000 to have a company made legally insolvent, it often does not make financial sense to do so. Generally, trade unions will only fund the costs of winding up a company on behalf of its members if the overall amount to be gained from RPS makes it worth doing so.

If the employer is legally insolvent and payments are to be made by RPS, those for Notice Payments will not be made until the statutory notice period has ended. This is because any income that is earned during the notice period will be deducted to reflect the actual financial loss suffered due to the employer's failure to give notice. You are also expected to 'mitigate your loss' by claiming any social security benefits that you are entitled to and taking any work you are offered. Thus, a payment from RPS for notice payments may be reduced by the amount of any social security benefit that could have been claimed during the notice period even if it was not claimed.

What is a Protective Award?

If more than 20 persons are to be made redundant at any one time, other than in very exceptional circumstances (e.g. a factory burns down putting everyone out of work immediately), the employer is expected to consult with any recognised trade union (or, if no recognised union, with employee representatives) to try to avoid or minimise the redundancies and/or the negative effect of any redundancies (e.g. by giving staff time off to look for other work before the redundancies take effect).

A claim for a Protective Award must be brought to the Tribunal by any recognised union and will cover those workers for whom it had bargaining rights (even if not union members); if there is no recognised union, the claim must be brought by any employees' representative body which may exist or be elected for the purposes of such consultation. In the absence of a recognised union or a representative body, claims must be lodged by each individual who was made redundant – a group claim is also possible but legal advice should be sought. Any such claim must be lodged within three months of the dismissal.

If such a claim is successful in showing that the employer did not properly consult about the redundancies, the Tribunal may award up to 90 days pay to each person who is covered by the claim.

If the company is 'in administration', the consent of the Administrators must be obtained before any such claim may proceed.

Will RPS pay the Protective Award?

If the employer is legally insolvent, RPS will pay a Protective Award subject to the eight weeks maximum overall payment for 'wages' which includes any Protective Award.

Any amount of the award that is not paid out by RPS (or if the employer is not legally insolvent the entire award) will become an unsecured debt and if there is any money left over if the company is ultimately wound up a further payment of, for example 5p in the £1, may be received but normally there will be no payments for such debts.

Claims for Unfair Dismissal and Discrimination

In the vast majority of cases, there is no point in pursuing claims for Unfair Dismissal and/or Discrimination as any compensation awarded by a Tribunal will be an unsecured debt and, even in the event of the company being wound up, there is very unlikely to be any payments made for unsecured debts.

If the company is 'in administration', the consent of the Administrators must be obtained before any such claim may proceed.

This information sheet provides a summary of the rights of employees where their employer becomes insolvent. This information should not be taken as a comprehensive statement of the law in this area. You are advised to take advice from your union representative before taking any action based on this information.

Thompsons NI offers a range of legal services including:

- Personal Injury and accident compensation
- Employment Rights
- Conveyancing
- Wills
- Matrimonial
- Criminal

For more information about union legal services, contact your union representative, call us on tel: **0808 100 8050 or visit our website www.thompsonssolicitors-ni.com**

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Appendix I - Redundancy Ready Reckoner

Post 1st October 2006

	Service (Years)																			
Age	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
18	1	1½	2																	
19	1	1½	2	2½																
20	1	1½	2	2½	3															
21	1	1½	2	2½	3	3½														
22	1	1½	2	2½	3	3½	4													
23	1½	2	2½	3	3½	4	4½	5												
24	2	2½	3	3½	4	4½	5	5½	6											
25	2	3	3½	4	4½	5	5½	6	6½	7										
26	2	3	4	4½	5	5½	6	6½	7	7½	8									
27	2	3	4	5	5½	6	6½	7	7½	8	8½	9								
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	10							
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	11						
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	12					
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	13				
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	14			
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	15		
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	16	
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½	
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17	
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½	
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18	
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½	
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19	
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½	
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24	
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½	
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25	
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½	
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26	
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½	
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27	
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½	
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28	
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½	
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29	
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½	
61* ¹	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	

*¹ -The same figures should be used when calculating the redundancy payment for a person aged 61 and above.'