



Employer Representative Guide to the Insolvency Payments Scheme

Department of Social Protection
www.welfare.ie

**PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY)
ACTS 1984 TO 2006**

Guide to the Insolvency Payments Scheme

Department of Social Protection

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This Guide and the relevant forms are available from the Department of Social Protection Website at www.welfare.ie.

The Guide is a general guide to the Insolvency Payments Scheme. It is not intended to be a legal interpretation of the legislation. Further information on the Scheme is available from the Insolvency Payments Section, of the Department of Social Protection, LO Call 1890 800 699.

The original 1984 Act under which the Scheme operates has been amended on a number of occasions by various other pieces of legislation and, with these amendments, is known collectively as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2006.

Where reference is made in this Guide to the Protection of Employees (Employers' Insolvency) Act 1984 (or the 1984 Act), or to other legislation, the reference applies to the legislation as amended by any subsequent legislation. Copies of the 1984 Act and other legislation referred to are available from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2.

THE INSOLVENCY PAYMENTS SCHEME

The purpose of the Insolvency Payments Scheme is to protect pay-related entitlements owed to employees who lose their employment because of the insolvency of an employer. These include arrears of pay, holiday pay, pay in lieu of statutory notice, and other entitlements. Certain contributions to occupational pension schemes or PRSAs are also covered. Payments under the Scheme are made from the Social Insurance Fund.

EMPLOYEES COVERED BY THE SCHEME

The Scheme covers employees who are employed in employment which is insurable for all benefits under social welfare legislation, or in employment that would be insurable for all benefits but for the fact that they have reached 66 years of age. It also covers certain employees exempted under social welfare legislation.

INSOLVENCY FOR THE PURPOSE OF THE SCHEME

The circumstances and date of insolvency for the purposes of the Scheme are set out in the Protection of Employees (Employers' Insolvency) Act 1984. The following is a summary of the general circumstances and date of insolvency for the purposes of the Scheme:-

Circumstances of Insolvency	Date of Insolvency
Liquidation or Receivership: - where the employer is a company and a winding up order is made or a resolution for voluntary winding up passed, or a receiver has been appointed by or for the holder of a debenture secured by a floating charge, or possession taken by or for the debenture holder of company property comprised in or subject to the charge.	The date of appointment of the liquidator or receiver, which possession is taken of the property or, in certain circumstances, the date of the passing of a resolution to wind up a company.
Death of employer: - where the employer has died, and the estate is insolvent and being administered in accordance with the rules of Part 1 of the First Schedule to the Succession Act 1965	The date of the death of the employer
Bankruptcy: - where the employer has been adjudicated bankrupt or has filed a petition for or executed a deed of arrangement within section 4 of the Deeds of Arrangement Act 1887	The date of the adjudication or on which the petition was filed or the deed executed
Insolvency of the employer under the legislation of another EU Member State and where the employees concerned are habitually employed in insurable employment in Ireland	The date on which the insolvency was established under the legislation of the Member State concerned.

ENTITLEMENTS COVERED BY THE SCHEME

Subject to some limits and conditions, the following entitlements are covered by the Scheme:-

1. Arrears of wages.
2. Deductions such as union dues, health insurance, e.g., V.H.I, Aviva, life assurance, etc., made from wages by agreement but not paid to the relevant body.
3. Arrears of sick pay due under an occupational sick pay scheme (limited to the difference between any disability or injury benefit in addition to any pay-related benefit payable under the Social Welfare Acts and normal weekly remuneration).
4. Holiday pay.
5. Pay in lieu of the statutory notice entitlement set out in the Minimum Notice and Terms of Employment Act 1973, or payment of an award by the Employment Appeals Tribunal under that Act.
6. An amount which an employer is required to pay under an Employment Regulation Order within Part IV of the Industrial Relations Act 1946 where proceedings have been instituted.
7. An amount which an employer is required to pay by order of the Labour Court under a Registered Employment Agreement within Part III of the Industrial Relations Act 1946, or in respect of which proceedings have been instituted.
8. Certain arrears of pension or PRSA contributions not paid into the pension scheme or PRSA. An amount which an employer is required to pay under a determination, decision, order, award, recommendation or mediated settlement (as appropriate) under the following legislation:
 - Unfair Dismissals Act 1977 or damages at common law for wrongful dismissal
 - Employment Equality Act 1998
 - Maternity Protection Act 1994
 - Adoptive Leave Act 1995
 - Parental Leave Act 1998
 - National Minimum Wage Act 2000
 - Carer's Leave Act 2001
 - Payment of Wages Act 1991
 - Terms of Employment (Information) Act 1994
 - Protection of Young Persons (Employment) Act 1996
 - Organisation of Working Time Act 1997
 - Protections for Persons Reporting Child Abuse Act 1998
 - European Communities (Protection of Employment) Regulations 2000
 - Protection of Employees (Part -Time Work) Act 2001
 - Competition Act 2002
 - Protection of Employees (Fixed -Term Work) Act 2003
 - European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
 - Industrial Relations (Miscellaneous Provisions) Act 2004 – award by a Rights Commissioner concerning victimisation
 - Employment Permits Act 2006 – award by a Rights Commissioner concerning penalisation of an employee.

Entitlements under the above legislation are covered only where the determination, decision, order, etc., was made no earlier than 18 months prior to the date of insolvency of the employer or after that date, and has not been appealed, or by which the appeal deadline has passed. The Scheme is extended from time to time to include new entitlements.

APPLICATION FOR ENTITLEMENTS UNDER THE INSOLVENCY PAYMENTS SCHEME

ALL APPLICATIONS FOR ENTITLEMENTS UNDER THE INSOLVENCY PAYMENTS SCHEME MUST BE MADE BY THE EMPLOYER REPRESENTATIVE AND SUBMITTED ON-LINE.

An application for Outstanding Wages, Sick Pay, Holiday Pay or Minimum Notice Entitlements should be made, certified and submitted on **Form IP1**.

An application for any other Entitlement under the Scheme (apart from Pension Scheme Contributions) should be made, certified and submitted on **Form IP2**.

The Employer Representative should examine the claim(s) and **certify the amount owed to the employee in accordance with the company records.** Once submitted the Form should be printed, signed (**original signatures only**) and forwarded to the Insolvency Payments Section for processing. Applications made on Form IP1 and Form IP2 should be accompanied by **Notice of Appointment of Liquidator/Receiver** and a copy of **the Statement of Affairs** where available.

An application for payment of outstanding Pension/PRSA Contributions should be made on Forms **IP3 and IP3 Employee Schedule**. **Pension Details** should be completed by a Person competent to act in respect of the Pension Scheme/PRSA e.g. Trustee/Administrator etc. The **Actuarial Certificate** is required for **Defined Benefit** Pension Schemes. Once submitted the Form, including the IP3 Schedule, should be printed, signed (**original signatures only**) and forwarded to the Insolvency Payments Section for Processing. Applications for Payment of Unpaid Pension Contributions should be accompanied by **Notice of Appointment of Liquidator/Receiver and Statement of Affairs** (unless previously submitted). In addition the **Trust Deed and Deed of Adherence** should be submitted with the application.

Please ensure that **All** documentation accompanying an application contains the **Employer PAYE** number. This **PAYE** number must be clearly stated on the front page of each document submitted.

AN APPLICATION IS NOT COMPLETE UNTIL THE PRINTED, SIGNED FORM, ALONG WITH THE SUPPORTING DOCUMENTATION HAS BEEN RECEIVED BY THIS OFFICE.

MODIFIED OR UNSIGNED FORMS WILL BE RETURNED AND WILL NOT BE PROCESSED.

LIMITS AND CONDITIONS ON PAYMENTS

There is a current **limit of €600 per week** on any amount payable under the Scheme which may be calculated by reference to an employee's pay. This limit is revised periodically.

Arrears of normal pay, deductions for union dues, etc., sick pay, holiday pay and pay in lieu of statutory notice are **limited to a maximum of eight weeks** and may relate only to **the period of eighteen months prior to the date of insolvency** in most cases.

Where an award has been made to an employee – for example, in respect of an unfair dismissal – the eighteen-month period normally applies to the date of the award, determinations, order, decision, etc. An award may also have a date that is later than the date of insolvency.

The amount payable for damages at common law awarded by a civil court for **wrongful dismissal** is subject to a **maximum of 104 weeks' wages**.

PAYMENTS FROM THE SOCIAL INSURANCE FUND AND DEDUCTIONS BY EMPLOYER'S REPRESENTATIVE.

Payments from the Social Insurance Fund are made through the employer's representative (except in certain exceptional situations). The Employer's Representative makes the relevant statutory deductions from these payments and forwards them to the appropriate body. The Employers Representative is **required to notify** the insolvency Payments section when these payments have been made; this notification should detail any deductions made.

TRANSFER OF EMPLOYEES' RIGHTS AND REMEDIES TO THE MINISTER FOR SOCIAL PROTECTION (PREFERENTIAL PAYMENTS)

Where a payment is made from the Social Insurance Fund in respect of any debt payable to an employee, or any amount paid into an occupational pension scheme or PRSA, the Minister for Social Protection becomes a creditor against the assets of the employer in respect of the amounts paid, subject to statutory limits.

Under section 10 of the 1984 Act, any preferential claim by the Minister against the assets of an insolvent employer ranks as priority over any other preferential claim of the employee concerned.

ARREARS OF PENSION OR PRSA CONTRIBUTIONS

The Insolvency Payments Scheme covers contributions which the employer and/or the employee were liable to pay into an occupational pension scheme or PRSA in respect of the year up to the date of insolvency of the employer.

In the case of contributions payable on behalf of an employee, payment can be made under the Insolvency Payments Scheme only where the amount of the contributions was deducted from the pay of the employee but was not paid into the pension scheme.

In the case of contributions payable on an employer's own account, the lower of the following amounts is payable, the balance of the employer's contributions remaining unpaid in respect of the period of twelve months immediately preceding the date of the employer's insolvency,

Or

the amount certified by an actuary (or equivalent, if the employer is insolvent under the legislation of another EU Member State) to be necessary for the purpose of meeting the liability of a pension scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees concerned.

If the cost of sickness, disability benefit or life assurance forms part of the contributions to an occupational pension scheme or PRSA, the amount of contributions attributable to this should be deducted from the application.

APPEALS TO THE EMPLOYMENT APPEALS TRIBUNAL - WHAT MAY BE APPEALED AND TIME LIMITS

Any person who has applied for a payment under the Scheme in respect of arrears of pay, sick pay, holiday pay or outstanding occupational pension scheme or PRSA contributions may appeal to the Employment Appeals Tribunal on the grounds that the payment made was less than the amount that should have been paid, **or** the application has been refused.

Appeals should be made to the Tribunal within **six weeks** of the notification of the decision to the applicant. The Tribunal, at its discretion, may extend the period for making an appeal in certain circumstances.

The Department itself may refer a claim to the Employment Appeals Tribunal for a decision where there is a doubt as to whether a claim or part of a claim is allowable.

A decision of the Tribunal on any matter referred to it under the Act is final and conclusive, but a person dissatisfied with the decision may refer a decision to the High Court on a question of law only.

PAYMENT OF FEES TO EMPLOYERS' REPRESENTATIVES

The Department will pay fees from the Social Insurance Fund to the employers' representatives on a per capita basis for each employee whose claim is processed. Details are available from the Insolvency Payments Section of the Department.

RIGHT TO REFUSE AN APPLICATION IN CASES OF AGREEMENT BETWEEN AN APPLICANT AND AN EMPLOYER

If, in processing a claim, the Department becomes aware that the employer had the means to pay all or part of the debt, but there was an agreement between the employee and the employer concerned that the whole or any part of the debt would be claimed under the Scheme, no payment will be made.

PRODUCTION OF RECORDS IN CONNECTION WITH AN APPLICATION

Under section 8 of the 1984 Act, an employer, employer's representative or any other person having control of records of holidays, wages or any document that may reasonably be considered to be relevant to an application may be required to produce these for examination.

OFFENCES

Forms used under the Act are statutory forms. Proceedings may be taken against any person who, in relation to a claim/application under the Act, makes a false statement or produces or furnishes false documentation or refuses or neglects to provide required information.

APPENDIX

CALCULATION OF NORMAL WEEKLY REMUNERATION

1. TIME WORKERS

Section 6(9) of the Protection of Employees (Employers' Insolvency) Act, 1984 defines "normal weekly remuneration" as having the same meaning assigned to it as in Schedule 3 to the Redundancy Payments Acts 1967 to 2003. Normal weekly remuneration therefore means an employee's earnings for a normal working week, including any regular bonus or allowance that does not vary in relation to the amount of work done. Also, any payment in kind normally received by an employee, e.g., free accommodation, free meals, etc., must be taken into account.

Overtime

In the case of outstanding overtime payments due to an employee on the termination of employment, an employee may claim (subject to the limits outlined below) either the actual overtime earned but not paid or the average weekly overtime due, whichever is the lower amount. Average weekly overtime should be calculated by ascertaining the total amount of overtime earnings in the period of 26 weeks which ended 13 weeks before the date of termination of the employee's employment and dividing that amount by 26. This figure should then be multiplied by the number of weeks for which overtime is outstanding and compared with the amount actually owed for overtime to determine the lower amount. Where normal weekly remuneration and overtime are outstanding for the same period, the amounts outstanding for each week should be combined and the total number of weeks payable may not exceed 8. The total weekly normal pay plus overtime payable under the Scheme may not exceed the weekly limit on remuneration (currently €600 per week).

2. PIECE WORKERS

Normal weekly remuneration for an employee who is paid in proportion to the amount of work carried out (e.g., if paid wholly or partly by piece-rates, bonuses or commissions related to output) will be taken to be the pay received for normal weekly working hours at a specially calculated rate. This rate is calculated as follows: -

- (a) The total number of hours worked by the employee in the 26-week period ending 13 weeks before the date on which the employee's employment was terminated is calculated first. Weeks worked with different employers will be taken into account if the change of employer did not affect the continuity of employment. Any week or weeks during the 26-week period in which the employee did not work will not be taken into account and the most recent week or weeks, counting backwards from the 26-week period, will be taken into account instead.
- (b) The pay to be taken into account is the amount due for all the hours worked during the 26 week period mentioned at (a), adjusted in respect of any variations in the rate of pay which became operative during the 13 weeks before the employee's employment was terminated.
- (c) The employee's average hourly rate of pay is ascertained by dividing the total pay as at (b) by the total hours as at (a). The weekly pay is then calculated by multiplying this average hourly rate by the number of normal weekly working hours of the employee concerned at the date on which employment was terminated.

3. EMPLOYEES WITH NO NORMAL WORKING HOURS

Employees who have no "normal" working hours should calculate their average pay, including bonuses, etc., over the last 52 weeks worked to determine their normal weekly wage.

4. SHIFT WORKERS

Shift workers' normal pay should be calculated in the same way as piece-workers' pay.