

Softening the blow

The fate of the employees is often one of the most pressing concerns when we advise directors that their insolvent company should cease trading. Naturally, most will dread delivering the news to their loyal, valued staff – some of whom may well be personal friends –, and fear the impact that redundancy will have on them and their families.

When addressing directors' concerns about this, we always take time to carefully explain the process by which dismissed staff can submit claims to the Redundancy Payments Service ('RPS') for compensation paid from the National Insurance Fund. We also clearly outline our own role in the procedure, if we were to be appointed liquidators of the company.

Helping employees receive their entitlement.

If a company enters liquidation, employees can submit claims to the RPS for statutory redundancy pay (subject to being employed for 2 years); statutory notice pay; unpaid wages (up to a maximum of 8 weeks) and pay for untaken annual leave (up to 6 weeks).

As a priority task, following our appointment as liquidators, we will request that the RPS open a new case for the company in question, and provide us with a reference number which we then communicate to the former employees to enable them to access the online claim system.

Within 14 days of the appointment, we submit a report to the RPS containing payroll details derived from the company's trading records, and information provided to us by the director(s). The RPS will then assess the employees' claims against the contents of our report to ensure their validity, and make payments directly to the claimants, subject to certain statutory limits.

The director as a claimant: evidence of employee status

The news that employees are entitled to submit these claims may at least ease some of a director's anxieties over closing a business, and also help to soften the blow somewhat when the redundancies are announced to staff. We often find that many directors are already aware of the claims process for staff yet surprised to learn that they too may be eligible to claim, however, for a number of reasons, this is frequently not straightforward.

Firstly, to be eligible, a director must have been paid via the payroll process, as an employee of the company – and this is not necessarily always the case. When assessing claims from directors under Section 230 of the Employment Rights Act 1996, the RPS will insist on seeing evidence of their employee status as well as requiring the completion of their recently-introduced questionnaire.

Depending on the circumstances, directors may need to support any claim with, for example, a contract of employment; historic P60s and/or wage slips; bank statements evidencing regular salary payments, and/or personnel policy documents. In the absence of satisfactory evidence, the RPS will reject a director's claim, although they will have recourse to make a claim to the Employment Tribunal if they feel that there are grounds to dispute the decision.

Director's claims and the National Minimum Wage Act 1988

In the interests of tax efficiency and to maintain their own National Insurance contributions, many directors will opt to take a minimal monthly salary of around £800 through the company's payroll system, and rely on dividends or a director's loan account for the vast majority of their personal income. Under UK employment law, as an employee, a director must pay themselves the national minimum wage. If they have received less than the minimum – and £800 per month would fall below that threshold - , as part of the claim process, they would have to provide a written declaration of the underpayment and also seek an uplift in the claimed sum paid by the RPS. The declaration contains an acknowledgment that the RPS may refer the claim to HMRC and the Insolvency Service's Investigations and Enforcement Services for breach of the National Minimum Wage Act 1988. Suffice to say, directors may want to consider the implications of this before submitting a claim to RPS.

The effect of a director's loan account balance

Where a director is entitled to make a claim, any compensation will be offset against the balance due to the company on a director's loan account. This is another important factor to be considered before the submission of a claim, and an aspect that we routinely cover during our initial consultations with potential clients, as - with insolvent companies - it's very common that any dividends recently taken will be considered as loans, due to the company's insufficient reserves.

When preparing a company's statement of affairs during the pre-appointment stage, we will require an accurate figure for any amounts outstanding on the loan account, so therefore directors should be fully aware, in advance, of the likely financial impact on their redundancy claim.

The director as a preferential creditor

Assuming that a director has met the eligibility criteria and their claim is paid, any arrears of wages and/or unpaid accrued holiday that exceed the statutory limits applied by the RPS will be treated as a preferential debt in the liquidation. If the funds from asset realisations allow, the liquidator will make a distribution to the employees as a priority over the claims of HM Revenue & Customs (the secondary preferential creditor) and other unsecured creditors.

BRI – Always on hand to help with redundancy claims queries

At BRI we fully recognise the severe emotional toll that the redundancy process can take on both staff and directors. We firmly believe that the most effective way of addressing our client's anxieties is to furnish them with the necessary information to deal with such a difficult situation with a degree of confidence, knowing that they are supporting their staff by providing accurate details on their possible entitlements on dismissal.

Furthermore, we're also always available to provide information directly to staff on the RPS claim process and to discuss the sometimes more complex issues surrounding redundancy claims by directors.

Northampton
100 St James Road
Northampton
Northamptonshire
NN5 5LF

01604 754352

Banbury
18 South Bar
Banbury
Oxfordshire
OX16 9AF

01295 272121

Coventry
1160 Elliott Court
Herald Avenue
Coventry Business Park
Coventry
CV5 6UB

02476 226839

Hitchin
7 Paynes Park
Hitchin
Hertfordshire
SG5 1EH

01462 429718

Milton Keynes
2nd Floor, Elm House
Woodlands Business Park
Linford Wood West
Milton Keynes
MK14 6FG

01908 317387

Spalding
Room 39
Welland Workspace
10 Pinchbeck Road
Spalding
PE11 1QD

01775 741020