

Are director's eligible to claim Redundancy in Insolvency?

Directors of insolvent companies often incorrectly assume that they have no statutory rights to claim redundancy and other payments in insolvency proceedings.

Provided that the director can prove their status as an employee of the Company, they will be eligible to submit their claim alongside all other staff previously employed. The director must be able to demonstrate that they were actively involved in the business as opposed to holding a non-executive role. This is usually demonstrated by the following data held by the Company:

- The director is subject to a contract of employment (written or implied).
- The director was drawing a salary through the Company's PAYE system.
- The director worked a minimum of 16 hours per week.

If the above criteria are met, then it is likely that the director will be eligible for statutory payments. At a difficult time when the directors source of income has been lost, a successful claim could provide some welcome financial assistance.

As with all other employees, the directors will be entitled to claim for a number of statutory payments from the Redundancy Payments Service (RPS) where the Company cannot meet the liabilities. The RPS online claim process is reasonably simple and successful claims are usually processed within 4-6 weeks of the commencement of the insolvency.

Redundancy Pay

The redundancy entitlement calculation used by the RPS is based on age, length of service and gross weekly pay.

- Half a week's pay for each full year under age 22.
- One week's pay for each full year aged 22 or older, but under 41.
- One and half week's pay for each full year aged 41 or older

The RPS cap the term of service to a maximum of 20 years in their calculations (up to a maximum of 30 weeks).

Salary & Holiday Pay

A director may be entitled to claim for unpaid wages up to a maximum of eight weeks, and up to six weeks of holiday pay for holidays accrued but not taken.

Notice Pay

Payment in lieu of notice is likely to be due to an employee when a Company enters insolvency. This will be calculated as being one week's pay for each year of full employment (up to a max of 12 weeks).

All claims are calculated on a weekly basis and are subject to a maximum of £508 per week and a minimum 2-year length of service is required to qualify. Any claim in excess of the amount covered by the RPS will remain as an unsecured claim in the Company's insolvency.

Please note that should your clients require any confidential advice regarding insolvency matters they are welcome to contact one of our partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedures please do not hesitate to contact us.

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