

Redundancy and Insolvency

A GUIDE FOR EMPLOYEES

when?
where
how?
who
what?



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

Introduction

We understand that it can be distressing if your employer has made you redundant or has become insolvent and cannot pay redundancy pay and other debts owed to you. This guide should help you claim any money you are entitled to from an insolvent employer and the National Insurance Fund. It tells you who is eligible to claim, what you can claim, how to claim it, and the conditions that apply. It also explains what to do if you disagree with us about how much you should receive. The guide is not a full statement of the law, but it should make claiming quick and easy.

The Department for Business, Enterprise and Regulatory Reform (BERR) provides guidance on redundancy for employers and employees on its website and in the booklet called 'Redundancy entitlement: statutory rights: a guide for employees'. Please read this leaflet alongside the BERR booklet, as we deal only with payments you can get from the National Insurance Fund (NIF) if your employer is insolvent or has failed to pay the statutory redundancy payment (in other words, the payment required by law). For details of how to get the BERR publication, please see Annex 3.

- Please read the whole booklet as your questions may be answered in later sections.
- Please keep this booklet as it may help to explain things you may need to know later.
- You can also call the Helpline 0845 145 0004 if you need general advice on anything mentioned in this guide. However, once you have sent us your claim form you will need to contact the Redundancy Payments Office (RPO) dealing with that insolvency for information and advice.

The independent insolvency practitioner or Official Receiver is responsible for dealing with your employer's insolvency. The RPOs are responsible only for statutory redundancy payment and other statutory guaranteed debts payable from the National Insurance Fund when your employer is insolvent. If you have any other concerns about the insolvency, please raise them directly with the insolvency practitioner or Official Receiver.

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Part 1 - Redundancy

1. What is redundancy?

In general, redundancy means dismissal that is caused by your employer's need to reduce or no longer employ the workforce. Redundancy may happen because a workplace is closing down or because fewer employees are needed for particular kinds of work or because the employer is insolvent. Normally your job must have disappeared. It is not redundancy if your employer immediately takes on a direct replacement for you. It may be redundancy if your employer is recruiting more workers to do different jobs or to work in another place.

2. When is a redundancy payment due?

Your employer should give you a lump sum payment, and explain in writing how the payment is calculated, at the time of your dismissal or as soon as possible afterwards (except in insolvency - see paragraph 26), if you:

- were an employee working under a contract of employment, whether written, verbal or implied;
- were dismissed as redundant; and
- have at least two years' continuous service with your employer.

Office holders such as company directors and company secretaries may not qualify if they have a controlling interest in the company. To qualify, office holders must show that they are also employees working under contracts of employment and that their relationship to the company is similar to that of other employees. They will not qualify if they deal only with company policy and go to board meetings in return for fees. Agency workers with a contract for services arranged through an employment agency are not considered employees.

3. Who is not entitled to redundancy pay?

The following categories of employees have no statutory entitlement to redundancy pay under the Act:

- Self-employed people or members of a partnership.
- Employees who were made redundant before 1 October 2006, and whose service ends on or after their 65th birthday.
- Members of the Armed Forces.
- House of Lords and House of Commons staff.
- Apprentices whose service ends at the end of the apprenticeship contract.
- Employees at the end of a fixed-term contract which was agreed, renewed or extended before 1 October 2002 and lasts at least 2 years, where they have already agreed in writing to waive (give up) their entitlement to a redundancy payment at the end of the contract. Any waivers inserted into contracts agreed, renewed or extended after 1 October 2002 will not be valid, so fixed-term employees will have a right to statutory redundancy payments if they are made redundant after being continuously employed for 2 years or more - see the BERR booklet 'Fixed-term work: a guide to the regulations' (see Annex 3 for details of how to get the publication).
- Domestic servants working in a private home who are members of the employer's immediate close family.
- Share fishermen paid only by a share in the proceeds of the catch.
- Crown servants or employees in a public office.
- Employees of the government of an overseas territory.

4. How much redundancy pay can I claim?

The redundancy payments will depend on:

- your length of service with your employer;
- how your service years relate to particular age bands; and
- your weekly pay, up to a limit imposed by law - currently £330 a week (increasing to £350 from 1 February 2009).

Please note All claims payable from the National Insurance Fund are subject to a statutory limit on how long they can be paid for and an upper limit on the amount of a week's pay. The limit on a week's pay is reviewed annually by The Department for Business, Enterprise and Regulatory Reform - see Annex 3 for details of how to get the booklet called 'Limits on Pay', which gives up-to-date rates.

5. How do I work out my length of service?

You can count up to 20 years of continuous service towards a redundancy payment. Your length of continuous service is counted back from the date your statutory notice ended. This is called the relevant date. If your employer gave you less notice than you are legally entitled to, the extra notice you should have had is added on.

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. Days lost through industrial disputes do not count towards your length of service for a redundancy payment even though they do not break the continuous service. So any days you were on strike will be taken away from your total length of service.

6. What are the age bands?

- For each complete year of service aged 41 and over, you will receive one-and-a-half weeks' pay.
- For each complete year of service aged 22 up to age 40, you will receive one week's pay.
- For each complete year of service up to age 21, you will receive half a week's pay.

There is a ready reckoner at Annex 2 to calculate the number of weeks of redundancy pay due. These are called 'qualifying weeks'. The redundancy ready reckoner starts at age 18, which means that someone who had 2 years' continuous service from the school-leaving age of 16 will qualify for a redundancy payment. However, if someone aged under 16 was able to work lawfully under the child and young person labour laws and was able to show that they were an employee with enough continuous service to claim redundancy rights, then they would be entitled to a redundancy payment. By counting the number of years' service backwards from the 'relevant date' (see paragraph 5), and using the appropriate weekly multiplier (half, one, or one and a half) for each of the service years, you can calculate the payment.

7. What is a 'week's pay'?

If you worked the same hours every week and your pay did not change from week to week - for example, staying the same however much work you did - then your week's pay is simply your basic weekly wage or salary. We do not include overtime unless your contract of employment required your employer to provide overtime and you to work it.

If your earnings changed from one week to another - for example, because of piecework, productivity bonus arrangements or variable hours - then we work out your week's pay by adding up the number of hours you worked, normally in your last 12 weeks of employment, and dividing your total earnings for the same period by the total number of hours worked. This gives us an average hourly rate, and we multiply that by your contracted hours. If you did any overtime during these 12 weeks and were paid at a higher rate, we will include the hours but use your normal basic rate of pay in our calculations. Payments for sick absence, holidays etc are not counted.

8. Example for calculating a week's pay

In the last 12 weeks you worked 440 hours including overtime, and earned £4,321.20 (excluding any extra payments for overtime). So we divide £4,321.20 by 440 to give an average hourly rate of £9.82. Your contracted hours per week are 36. Therefore, £9.82 multiplied by 36 gives you a weekly wage of £353.52. [$(£4321.20 \div 440 = £9.82) \times 36 = £353.52$]

But remember that as this amount is more than the £330 weekly limit imposed by law, we have to use £330 to calculate your entitlement. The limit increases to £350 from 1 February 2009.

9. Example of redundancy pay calculation

You are made redundant at the age of 43, having worked for your company for 14 years. Your pay at this time is £350 a week and the statutory limit is £330. The ready reckoner shows a person of your age and length of service as having 15 'qualifying weeks'.

To get 15 'qualifying weeks' your 2 complete years' service since age 41 each qualify for one-and-a-half weeks' redundancy pay, and your 12 previous years' service each qualify for one week's redundancy pay. The total number of weeks' redundancy pay due for your 14 years' service is 15. Your redundancy payment is 15 x £330, which is £4,950. We do not deduct any tax or national insurance from this amount. [$(2 \times 1\frac{1}{2} = 3) + (12 \times 1 = 12) = 15 \times £330 = 4,950$]
NB. The weekly limit increases to £350 from 1 February 2009.

10. What can I do if my employer has not given me the redundancy pay I am due?

If your employer IS insolvent, you can make a claim directly to the RPO. The insolvency practitioner will give you the relevant booklet and form to complete. See part 2 for more information.

If your employer IS NOT insolvent, we can pay you only if you have a tribunal award for redundancy pay. You should claim your redundancy pay in writing from your employer or complain to an employment tribunal within 6 months of your employment ending. If you do not do this you may lose your right to a redundancy payment. You can make a late claim to an employment tribunal within a second 6-month period. However, the tribunal will only hear your claim if you can provide a good reason for the delay. The tribunal cannot consider claims made later than 12 months after the job ended. The exception to this is where an employee has died and their representative is applying to the tribunal. In such cases the time limit is 18 months from the date the job ended.

You should ask the employment tribunal to consider what you are owed and who should pay you. If the tribunal orders your employer to pay, but he or she does not, then you can claim your redundancy pay from us.

You can claim the money from one of the Insolvency Service's Redundancy Payments Offices using the RP1 claim form at the back of this guide. You should complete only the questions relating to your redundancy payment. We cannot make any other payments, such as unpaid wages, loss of notice or holiday pay, if your employer is not insolvent. Please see Annex 1 for the address to send your form.

Part 2 - Insolvency

11. What is insolvency?

If your employer is insolvent an independent insolvency practitioner or Official Receiver will be appointed to deal with their affairs.

If your employer is a company or a limited liability partnership, it is only insolvent if one of the following has occurred:

- There is a court winding up order.
- There is an administration order.
- A resolution has been passed for its voluntary winding up due to insolvency.
- A voluntary arrangement is made with creditors.
- A receiver or manager has been appointed over the company's undertaking, or has taken possession of property secured by a floating charge under a debenture (England and Wales only).

If your employer is an individual in England and Wales, one of the following must have happened:

- Bankruptcy.
- A voluntary arrangement with creditors.
- The employer has died and their estate is administered under the Insolvency Act 1986.

If your employer is an individual or partnership in Scotland one of the following must have happened:

- Sequestration (appointment of a trustee by the court) of the estate of the individual or partnership.
- A deed of trust has been agreed between the individual, or each partner, and the creditors.
- A judicial factor has been appointed to administer a dead employer's estate.

It is not insolvency if your employer just stops trading or closes down a branch or branches, or if a company is struck off the Companies House register.

12. Who can qualify for our help in insolvency?

You will receive a payment only if you were an employee and your job with the insolvent employer has ended. You do not need to have worked for your employer for a certain time and there are no age limits. Office holders such as company directors and company secretaries may not qualify if they have a controlling interest in the company (please see paragraph 3 for more information).

We may also assist employees of an insolvent employer who continue to work in the business when it transfers to a new owner (see paragraph 36 for more).

13. Who cannot claim?

You cannot claim payment from the NIF if you are:

- self employed or a member of a partnership;
- a share fisherman if you are paid only a share in the proceeds of the catch;
- a merchant seaman;
- an employee who normally lives and works outside Great Britain.

14. What debts can I claim if my employer is insolvent?

You can claim:

- wages;
- holiday pay;
- notice pay;
- a basic award for unfair dismissal;
- any reasonable sum to reimburse any fee or premium you have paid as an apprentice or articulated clerk;
- redundancy pay (see part 1 on redundancy pay).

The law limits the number of weeks you can be paid from the NIF and how much you can get per week. The limit on a week's pay is reviewed annually by the Department for Business, Enterprise and Regulatory Reform and is currently £330 a week (increasing to £350 from 1 February 2009). Details of the current weekly rate of pay are available on the BERR website. See Annex 3 for details.

15. How much can I claim in unpaid wages?

You can claim for up to 8 weeks before the date of insolvency. You can choose any week that is most beneficial to you - they do not have to be consecutive weeks. You cannot add part weeks together to make a whole week. If you choose a week in which you are owed only one day's pay, this counts as a whole week of your 8-week allocation. The number of weeks (or part weeks) for which you were not paid (up to the 8-week limit) is multiplied by your weekly wage up to the statutory limit in force at the date of insolvency (£330 a week at the time of printing and increasing to £350 from 1 February 2009). If you are claiming a part of a week's pay, the weekly statutory limit is reduced proportionately. Wages payment includes:

- commission;
- overtime;
- statutory guaranteed pay days for time off under the temporary lay off and short-time working provisions;
- statutory payments for time off work or suspension from work on medical or maternity grounds;
- a protective award made by an employment tribunal if your employer has failed to consult your representative about a collective redundancy (see paragraph 33 for further information).

We can pay you only what your employer owes you. If you owe your employer any money, that may be offset against your claim to us.

You cannot claim unpaid maternity pay or sick pay from us under the insolvency rules. You claim

maternity pay from Her Majesty's Revenue and Customs and sick pay from the Department of Work and Pensions. You should contact your local tax office or Jobcentre for further information.

16. Example of wages calculation

When you are made redundant you are owed 10 weeks' wages and your pay is £350 a week. We can pay you 8 weeks (the maximum period allowed) x £330 (the maximum weekly limit), which is £2,040. Remember, we have to deduct income tax and national insurance at the basic rate from this amount [$8 \times £330 = £2,640$]. Please note the limit increases to £350 from 1 February 2009.

17. How much holiday pay can I claim?

You can be paid outstanding holiday pay for up to 6 weeks, again up to the limit of £330 a week increasing to £350 from 1 February 2009. Income tax and national insurance at the basic rate are deducted from this amount. Holiday pay includes holidays taken and not paid, or holidays you have become entitled to but have not taken, during the 12-month period before your employer became insolvent. If when your employment ended you had not taken all your holidays, you can be paid the balance you became entitled to when your job ended. Holidays must be taken during the relevant leave year. We cannot consider payment of holidays carried forward from the previous year unless this is allowed under your contract of employment.

18. Example of holiday pay calculation

You worked 5 days a week and earned £350. Your leave year was from 1 January to 31 December and you were entitled to 30 days' holiday in the leave year. Your employment ended on 30 June halfway through the leave year; so you were entitled to 15 days' holiday when your job ended. You had taken 1 week's holiday (5 days) leaving 2 weeks' (10 days') unpaid holiday entitlement. We would pay you 2 weeks' holiday pay at £330, the statutory rate of pay, which comes to £660 [$2 \times £330 = £660$]. Please note, the limit increases to £350 from 1 February 2009.

19. How much compensatory notice pay can I claim?

You can claim compensation if your employer has failed to give you the minimum statutory notice. Further details about notice are given in the BERR's booklet 'Rights to notice and reasons for dismissal' - see Annex 3 for details of how to get this booklet. Your statutory entitlement is:

- 1 week's notice if you were continuously employed for 1 calendar month or more but less than 2 years;
- 1 week for each year of employment if you were continuously employed for 2 years or more but less than 12 years;
- 12 weeks if you were continuously employed for 12 years or more.

Failure to give proper notice is a breach of contract for which you are entitled to compensation. The courts have said the compensatory notice payment we make is similar to a common-law damages payment. That means that the payment must compensate you for the actual loss you suffered, so we must reduce it by any income you have received or should have received during the statutory notice period. In other words, you can receive only what you would have earned if you had been allowed to work your notice period. Again, the statutory maximum we can pay is £330 a week increasing to £350 from 1 February 2009.

Please note - we will send you an RP2 claim form at the end of your notice period because we

can only work out how much compensation you may be due when we have details of your income during that time.

You must keep your loss to a minimum by:

- claiming all the benefits to which you are entitled;
- doing your best to find a new job; and
- taking your full wages or salary during the notice period in any new job you find.

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 you could have earned from the new job.

The income we take into account during your notice period is:

- earnings from new employment;
- any state benefits you claimed, or could have claimed, and are entitled to. If you have proof that you are not entitled to any benefits, we will not make any deductions;
- an amount equivalent to basic rate tax, which you would have paid if you had worked your notice period. This is not an actual tax deduction that is paid over to the tax office. We call this 'notional' tax and it is deducted because you can only receive the amount you would have earned if you had been allowed to work your notice period.

20. How we work out compensatory notice pay

Your compensation is the number of weeks' statutory notice you were entitled to but did not receive, multiplied by your actual weekly wage. If you get another job during all or part of this notice period, we have to deduct any wages you earn. If you do not get another job, you should claim any state benefits you are entitled to. We have to deduct any state benefits you are entitled to even if you have not claimed that benefit. We also deduct a notional amount for tax, as you would have paid this as tax had you received the notice payment as wages. If, after these deductions, the amount is still over the current limit, we have to limit your money to the statutory amount.

21. Example of compensatory notice pay calculation (please note this calculation is based on the statutory rate in force on 1 Feb 2006)

You have 12 years' service at a rate of £500 a week. You receive jobseeker's allowance for 11 weeks at £57.45 a week and new earnings for 1 week at £400 a week. 22% is the rate for notional tax deductions and the statutory cap on the payment is £3,720 (12 x £310).

Your gross claim is 12 weeks at £500	= £6,000.00
Less 11 weeks' benefits at £57.45	= 631.95
Less 1 week's earnings at £400	= 400.00
Your net claim before notional tax	= 4,968.05
Less 22% notional tax	= 1,092.97
Your net claim after notional tax	= 3,875.08
RPO pays capped amount of 12 weeks at £310	= 3,720.00

22. What happens if you think we have deducted too much 'notional' tax from your compensatory notice pay?

Although this is not an actual tax deduction and is not paid over to the tax office, we will consider a refund of tax at the end of a tax year in which your payment was made in the same way the tax office would. The tax office sets a tax threshold and operates a tax banding system. This means that you can earn a certain amount before paying tax on earnings.

Each year you are allowed to earn a certain amount - called your personal allowance - before you have to pay tax. If your total income for the year is less than your personal allowance, we may have reduced your compensatory notice pay by too much.

You will need to make a claim to us for a refund of notional tax, but you can only do this at the end of the tax year. Contact the Redundancy Payments Office that dealt with your claim and ask for form RP13. Return the completed form with the documents requested on the RP13 and we will work out any refund we owe you.

23. An example of a notional tax refund (please note this calculation is based on the statutory rate in force on 1 February 2005)

A compensatory notice payment for 4 weeks at £280 totalled £1,120 (the net payment made to the employee after deductions of tax and notional benefit). The statutory limit for that period was £290 a week, multiplied by 4 weeks, totalling £1,160. If we had deducted £200 in tax, and later refunded it, it would make the total payment £1,320, which is greater than the statutory limit. The maximum refund payable would be £40 to bring the total claim up to but not over the limit of £1,160.

24. Who cannot claim a refund of notional tax deducted from compensatory notice pay?

Although we refer to 'notional tax refunds', the payments are in fact extra payments, on top of compensatory notice pay already paid. You cannot claim these extra payments if:

- even after deductions for tax and benefit, you have received the full statutory amount for your notice period of, currently, £330 a week increasing to £350 from 1 February 2009; or
- your taxable earnings exceed the lower rate tax threshold - meaning you are not eligible for any tax refund, whether real or notional.

25. Will my pension be affected?

If your ex-employer has not paid certain contributions into your occupational or private pension scheme, the administrator of the scheme may ask us to pay those contributions.

If your employer normally paid pension contributions out of your wages on your behalf, rather than paying the contributions separately, and we pay you arrears of wages (unpaid wages owed to you), then you may choose to send in these contributions to the pension scheme yourself. If you don't keep up the contributions, your benefits under the scheme may be affected.

Part 3 - How to claim

26. How to claim your debts in the insolvency

You should fill in the RP1 claim form at the back of this guide and send it to the insolvency practitioner dealing with your employer's insolvency. They will record details of your claim as part of the insolvency and then pass the claim forms to the RPO. Annex 1 gives the addresses of the RPOs and the areas they cover.

27. How do I know you are dealing with my claim?

When we put information from your claim form onto our computer system, we will send you an acknowledgement letter. This shows that we are dealing with your claim. If you do not receive a letter within 3 weeks of sending us your claim, please call us - see Annex 1 for details of the RPO and areas they cover.

28. When will I be paid?

We will need to carry out some checks on the information you and the insolvency practitioner or Official Receiver give us. This can sometimes take a few weeks, but we aim to pay around 78% of claims within 3 weeks and 92% within 6 weeks of receiving your claim form. We may take longer where we are seeking information about a transfer of the business in which you work or worked. (See paragraph 37 for more information.)

If you did not get the correct notice from your employer we will send you an RP2 form at the end of what should have been your statutory notice period (see paragraph 19).

29. Arrangements for payment

When we receive an application form from you or the insolvency practitioner, we will work out the payment you are due to receive and send it directly to you. You will also receive a statement of how your payments were calculated. If you disagree with the amounts paid to you, please see part 5, paragraph 38 for more information.

We will make payments to your bank account. In exceptional cases we can send you a payable order if you do not have a bank account or you have given us a good reason not to use your bank account.

After we have paid the money owed to you, we will take over your rights in the insolvency proceedings in relation to those debts. This means we will seek to recover the money for the National Insurance Fund in the same way as other creditors of your employer try to get their money back.

30. Will I pay tax?

Arrears of pay and holiday are taxable as they relate to payments under your contract of employment. We cannot use tax codes because your employment has ended and we are not your employer. We will deduct tax and national insurance contributions at the basic rates before paying you. The information is sent to the tax office at the end of the tax year and you can claim any tax rebate from your tax office in the normal way. If you think you are entitled to a refund of tax from the other payments we make to you, you need to contact your local tax office.

Redundancy pay and compensatory notice pay are not taxable as they relate to payments made after your employment has ended. (But see paragraphs 19-23 for the reason why notional tax is taken from compensatory notice pay.)

For more about taxable income, please contact your local tax office.

31. What happens if I am owed more than you can pay me?

Because the law only allows us to pay up to a certain limit, you may still be owed the rest of your money. You should claim this from the independent insolvency practitioner or Official Receiver who is handling your employer's insolvency. You are unlikely to receive all the money you are owed, but you may get some of it.

32. What can I do if my employer IS NOT insolvent but has not paid my wages, holiday pay or notice pay?

You can apply to an employment tribunal for an award within 3 months of failing to receive

payment. You could also sue the employer for the money owed. However, if you go to an employment tribunal or sue, there is no guarantee that the employer will pay you. We could not pay you even if you got an award from the tribunal or court. Alternatively, you could petition (apply to) the court for the winding up of the company so that you could then claim payment from us (up to statutory limits). A joint petition with other employees or creditors, or both, would spread the cost. But before taking this step you should get independent legal advice (perhaps from your local Citizens Advice Bureau) so that you can compare the costs of legal action to put the company into insolvency against the amount we could pay you.

If your employer is a limited company it will be listed on the register of companies, which is kept at Companies House. When a company stops trading the director can ask for the company to be taken off the register. This is called 'striking off' or dissolving the company. Companies House can also strike a company off the register if it fails to comply with company law, for example by failing to submit annual accounts. When a company is struck off it no longer exists and you will have no employer to take action against. Before you could take any legal action, you would have to pay to restore the company to the register, as well as paying the legal costs of the winding up. Therefore, if you are considering applying to wind up a company you should contact Companies House without delay to find out whether the company is due to be struck off. If it is, you should write to Companies House to object to the company being struck off.

Part 4 - Redundancy consultation and business transfers

33. What if an employer does not consult my trade union or elected representative on proposed redundancies?

An employer must inform and consult employees' representatives when there is a proposal to make 20 or more employees redundant at any one establishment. Representatives can be:

- trade union officials recognised by the employer as able to represent particular types of employees in collective bargaining; or
- where there is no trade union, an elected representative for the whole workforce; or
- combination of trade union officials and elected representatives for different types of employees.

For example, a trade union may represent shop-floor workers but not office staff. The office staff should have the opportunity to elect someone to represent them.

If the employer failed to consult about the redundancies, the representatives can complain to an employment tribunal. However, where the employer has not arranged for employees to elect representatives, each individual can complain.

An employment tribunal can make a 'protective' award of up to 90 days' pay, depending on the seriousness of the employer's failure to consult. If an award is made for all categories of workers represented by the union or elected representatives, it does not matter whether individual employees do not belong to the trade union. All employees of that type would be entitled to the payment.

Full details of the consultation requirements are available in the BERR booklet 'Redundancy consultation and notification' - see Annex 3 for details of how to get a copy.

34. How do I claim for payment of the protective award?

Normally your trade union representative or elected representative or the insolvency practitioner

will send us a copy of the tribunal award and ask us to pay all employees in the category named by the tribunal as entitled to payment. If there was no trade union representative, and you got an award yourself, you should send the tribunal decision to us. You should also tell the insolvency practitioner or Official Receiver of your award. If an award has been made but you have not received a payment from us, please contact the office that made your other payment for information (see Annex 1 for the address and telephone numbers).

35. How is a protective award calculated?

A protective award is treated as wages and can be paid for up to 8 weeks. If we have already paid you 8 weeks' wages at £330 a week increasing to £350 from 1 February 2009, we will not be able to pay you any more. However, if you have used only part of your 8-week allocation, you can claim the balance up to the 8-week limit as a protective award. We deduct jobseeker's allowance you received during the period of the award because the law does not allow an employee to receive wages and jobseeker's allowance for the same period. We also deduct national insurance contributions from the award as it is classed as pay. Tax is not deducted from protective awards if the 8-week period falls after your job has ended.

36. What if there is no trade union official or elected representative, and an outside organisation offers to take on the work for a percentage of any awarded payout?

You should think very carefully before letting such an organisation represent you. The Employment Tribunal Service is a free, independent judicial body set up specifically so that employees and employers can resolve disputes without legal costs. It is less formal than a court and you do not need a solicitor or other professional to represent you. The Advisory, Conciliation and Arbitration Service (ACAS) provides free advice on all employment rights. Its helpline is 08457 47 47 47. Your local Citizens Advice Bureau also provides free advice.

37. Business transfers

There are special rules to protect employees when the business or part of the business they work in is taken over by a new owner. These are called the Transfer of Undertakings (Protection of Employment) Regulations 2006 - commonly known as TUPE.

Normally, if the new owner employs you, you have continuity of employment from the old to the new owner and you will not be redundant. The new owner would be liable for any debts owed to you under your contract of employment.

The rules are different if the transfer took place at a time when the previous owner was insolvent. The aim is to make it easier to sell the business as a going concern. TUPE does not apply to an insolvency where the undertaking is wound up and the proceeds are distributed to creditors. If your employer were bankrupt or in liquidation at the time of the transfer you would not be covered by TUPE and you would not get continuity of employment, even though you started work with the new owner of the business. You would be starting a new job. We would be able to pay your outstanding wages, holiday pay, notice pay and redundancy pay up to the statutory limits. No liability for unpaid contractual debts would pass to the new owner.

TUPE does apply to insolvencies where the intention is to rescue the business. If your employer is in administration, or has made a voluntary arrangement with creditors, or is in administrative receivership, you will be protected by TUPE. To assist the rescue of all or part of an insolvent business, we will pay you up to the statutory limits for wages and holidays taken but unpaid, even if you transfer to the new owner. If you were entitled to more than we could pay, you should claim the balance from the new owner. We will not pay you any redundancy pay or notice

pay as you were not dismissed and you have continuity of employment. The new owner will become liable for the rest of your annual holiday entitlement under your contract.

The insolvency practitioner dealing with your ex-employer will tell you what claims you can make. You can also call the Redundancy Payments Helpline for advice.

If you are dismissed in the course of a transfer of the business and the reason for the dismissal is genuine redundancy, we can pay you a redundancy payment and a notice payment. However, if the reason for the dismissal is the transfer itself, this is normally treated as unfair dismissal and not redundancy. You may be able to claim compensation for unfair dismissal from the new owner. You may have to apply to an employment tribunal to deal with any dispute. There are different time limits for applying, but if you apply within 3 months of your dismissal, you should not be out of time.

You can get further information on this subject from the BERR website under Employment Matters. ACAS can also give advice on this subject. See Annex 3 for details.

Part 5 - Complaints about payments and service

38. What can an employment tribunal do?

If you disagree with your employer about your entitlement to a redundancy payment, you can take the matter to an employment tribunal, naming your employer as the 'respondent' on your tribunal claim form (ET1). You may lose your right to a payment if you do not write to your employer about this or apply to a tribunal within 6 months of the day your job ends (see paragraph 10 about time limits).

If you disagree with what we have paid, you can ask a tribunal to consider what the payment should be. In this case you should name the Secretary of State for Business, Enterprise and Regulatory Reform as the 'respondent' on your tribunal claim form (ET1) and give the address of the Redundancy Payments Office dealing with your claim. There are strict time limits for making a claim to an employment tribunal. You must make a complaint within 3 months of receiving the payment from us if you think the payment is wrong, or within 3 months of the date of our letter rejecting your claim for payment.

If you want to apply to a tribunal, you can get the application form from your local JobcentrePlus, an employment tribunal office, or a Citizens Advice Bureau. If you have access to the internet you can apply online through the Employment Tribunal website at:
<http://www.employmenttribunals.gov.uk>

39. How can I make a complaint if I am dissatisfied?

If you have a complaint about the Redundancy Payments Office or the Official Receiver dealing with your claim, you should follow the procedure in our leaflet 'Information on making a complaint'. You can get a copy of this from the Publications Orderline on 0845 015 0010 (calls to this number are charged at local rate). You can also download the leaflet from our website, www.insolvency.gov.uk

If you have a complaint about the independent insolvency practitioner dealing with your ex-employer's insolvency and about the way the practitioner is treating your redundancy, then you should first write to the practitioner. If you are dissatisfied with the response, you should then contact their authorising body - you can get details by phoning our Insolvency Enquiry Line on 0845 602 9848 or e-mailing Insolvency.Enquiryline@insolvency.gsi.gov.uk

Annex 1 - Where to send your form

Once you have filled in the form, send it to the appropriate Redundancy Payments Office or to the insolvency practitioner.

WHERE YOU WORKED

WHERE TO SEND YOUR FORM

Birmingham	Lincolnshire	Redundancy Payments Office
Bedfordshire	Manchester	Cobalt Square
Berkshire	Norfolk	83-85 Hagley Road
Cambridgeshire	Northamptonshire	Birmingham B16 8QG
Cheshire	Nottinghamshire	Telephone: 0121 456 4411
Cornwall	Oxfordshire	E-mail: birmingham.rpo@dti.gsi.gov.uk
Derbyshire	Rutland	
Devon	Shropshire	
Dorset	Somerset (including Bristol)	
Gloucestershire	Staffordshire	
Hampshire	Wales	
Herefordshire	Warwickshire	
Isle of Wight	West Midlands	
Leicestershire	Wiltshire	
Lancashire	Worcestershire	
Cleveland	Teeside	Redundancy Payments Office
Cumbria	Tyne & Wear	Ladywell House
Durham	Scotland	Ladywell Road
Merseyside	Yorkshire	Edinburgh EH12 7UR
Northumberland		Telephone: 0131 316 5600
		E-mail: erpo@dti.gsi.gov.uk
Buckinghamshire	London	Redundancy Payments Office
Essex	Suffolk	PO Box 15
Hertfordshire	Surrey	Exchange House
Kent	Sussex	60 Exchange Road
		Watford
		WD18 0YP
		Telephone: 01923 210 700
		E-mail: wrpo@dti.gsi.gov.uk

If you need any more information about filling in the RP1 form, or general advice on redundancy, phone the Helpline on 0845 145 0004. If you have any questions about your claim after you have sent in your form, phone the appropriate office and quote the name of your former employer.

Annex 2 - Ready reckoner

Read off the employee's age and number of complete years' service. The table will then show how many weeks' pay is due to them. The table starts at 18, as the legal school-leaving age is 16. However, if you need to calculate a payment for an employee who started work below age 16, please see paragraph 6 for information.

Service (years)																				
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Age																				
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*	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	

This table is available interactively. If you log on to the Direct Gov website on http://www.direct.gov.uk/en/Dio1/DoltOnline/DG_4017972

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

Annex 3 - How to get copies of our publications and other publications on employment rights

Insolvency guidance

All Insolvency Service Publications (including this booklet) can be downloaded from our website:

<http://www.berr.gov.uk/publications/>

If you would prefer to order publications by telephone, please call the Publications Orderline on 0845 015 0010. (Calls to this number are charged at local rate.) You can also contact the Orderline by fax on 0870 150 2333, or Minicom on 0870 150 2100.

If you have difficulty using the above site, please contact the BERR Publications Unit by telephone on 020 7215 6024 or by e-mail to pubs.unit@berr.gsi.gov.uk

Other Sources of Information for Employment Matters

If you are seeking advice on employment rights, and have access to the internet, you will find the 'employee section' of the Directgov website helpful:

<http://www.direct.gov.uk/Employment/Employees/fs/en>

From the Direct Gov website you will find links to all the following booklets.

1. Redundancy entitlement - statutory rights. A guide for employees
2. Redundancy consultation and notification
3. Contracts of employment: changes, breach of contract and deductions from wages
4. Limits on payments and awards - Guidance
5. Continuous employment and a week's pay: rules for calculation
6. Transfer of Undertakings (Protection of Employment) Regulations 2006: redundancy and insolvency URN 06/1368 and Employment rights on the transfer of an undertaking: a guide to the 2006 regulations for employees and employers
7. Rights to notice and reasons for dismissal

ACAS can also give advice on employment rights. The website address for ACAS is: <http://www.acas.org.uk/> or you can call their Helpline on 08457 47 47 47.

Annex 4 - Glossary of insolvency and employment rights terms

Glossary of insolvency terms	Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.
Administration order	An order made in a county court to arrange and administer the payment of debts by an individual; or an order made by a court in respect of a company that appoints an administrator to take control of the company. A company can also be put into administration if a floating charge holder, or the directors or the company itself files the requisite notice at court.
Administrator	An IP appointed by the court under an administration order or by a floating charge holder or by the company or its directors filing the requisite notice at court.
Charge	Security interest taken over property by a creditor to protect against non-payment of a debt (such as a mortgage).
Compulsory liquidation	Winding up of a company after a petition to the court, usually by a creditor.
Creditor	Someone owed money by a bankrupt or company.
Debenture	A document in writing, usually under seal, issued as evidence of a debt or the granting of security for a loan of a fixed sum at interest (or both). The term is often used in relation to loans (usually from banks) secured by charges, including floating charges, over companies' assets.
Deed of trust	A formal arrangement with your creditors, used in Scotland where a debtor grants a deed in favour of the trustee which transfers their assets to the trustee for the benefit of creditors
Director	A person who conducts the affairs of a company.
Fixed charge	A charge held over specific assets. The debtor cannot sell the assets without the consent of the secured creditor or repaying the amount secured by the charge.
Floating charge	A charge held over general assets of a company. The assets may change (such as stock) and the company can use the assets without the consent of the secured creditor until the charge "crystallises" (becomes fixed). Crystallisation occurs on the appointment of an administrative receiver, on the presentation of a winding-up petition or as otherwise provided for in the document creating the charge.
Insolvency practitioner	Anyone holding a licence to act as a receiver, liquidator, administrator, supervisor or trustee of a company or individual.
Judicial factor	A Scottish term for some one appointed by the Court of Session, and supervised by the Accountant of Court, to manage and administer property in a range of different circumstances, such as insolvency.
Liquidation (winding up)	Applies to companies or partnerships. It involves the realisation and distribution of the assets and usually the closing down of the business. There are three types of liquidation – compulsory, creditors' voluntary and members' voluntary.
Member (of a company)	A person who has agreed to be, and is registered as, a member, such as a shareholder of a limited company.
Officer (of a company)	A director, manager or secretary of a company.

Glossary of insolvency terms	Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.
Official Receiver	An officer of the court and civil servant employed by The Insolvency Service, who deals with bankruptcies and compulsory company liquidations.
Petition (for winding up)	A formal application made to a court.
Provisional liquidator	OR/IP appointed to preserve a company's assets pending the hearing of a winding up petition
Receiver	The commonly used name for an administrative receiver. The term can also mean a person appointed by the court or with the power to receive the rents and profits of property. Receivers who are not administrative receivers do not need to be insolvency practitioners.
Sequestration	A Scottish legal term for personal bankruptcy where the Court formally declares you Bankrupt.
Supervisor	An IP appointed to supervise the carrying out of a company voluntary arrangement
Voluntary arrangement	A formal arrangement with your creditors for repayment of debts, which is supervised by an insolvency practitioner
Voluntary liquidation	A method of liquidation not involving the courts or the Official Receiver. There are 2 types of voluntary liquidation - members' voluntary liquidation for solvent companies and creditors' voluntary liquidation for insolvent companies.
Winding up order	Order of a court, usually based on a creditor's petition, for the compulsory winding up or liquidation of a company or partnership

Glossary of employment rights terms	Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.
Basic award	Compensation for unfair dismissal is normally built up from two component parts, <u>basic award</u> and <u>compensatory award</u> . The basic award part is not related to loss suffered. It is simply a multiple of a <u>week's pay</u> (as defined) according to a formula that takes into account years of service and age of the claimant. Tribunal statutory award for unfair dismissal.
Collective bargaining	Collective bargaining arrangements are a system of rules, jointly agreed by trade union officials and an employer in respect of the description of employees, which the trade union is recognised, by the employer.
Common law	Unwritten laws or customs.
Companies House register	A register of company names held at Companies House
Notional	Imaginary – not based on fact.
Compensatory notice pay	Compensation for receiving proper notice of your job ending.
Controlling interest	The amount of shares held in the company.
Employment tribunal	Court of law set up especially to sort out employment rights disputes.
Jobseeker's allowance	Benefit payable to the unemployed
National Insurance	National Fund managed by Her Majesty's Revenue and Customs to

Fund	which employers and employees pay contributions to build up entitlement to certain social security benefits, including insolvency payments.
Protective award	A penalty of against an employer for failing to consult employees representatives about 20 or more redundancies. A tribunal may award up to 90 days' pay, depending on the seriousness of the employer's failure to consult.
Personal allowance	Everyone who lives in the UK is entitled to an Income Tax personal allowance. This is the amount of income you can receive each year without having to pay tax on it.
Qualifying weeks	The total number of <u>weeks</u> redundancy pay used to calculated the payment after taking into account the number years an employee has worked in the specified age bands.
Relevant date	The legal date for determining statutory redundancy and insolvency payment.
Respondent	A person or company against whom an employee has made a complaint to an employment tribunal.
Statutory	An entitlement that is included in written law.
Striking from the register	Removing a company name for the register of companies.
Tax threshold	The earnings level set by Her Majesty's Revenue and Customs for the amount of tax to be deducted from your pay.
Temporary lay-off and short-time working provisions	When their employer does not provide employees with work, and the situation is expected to be temporary, they are regarded as laid off. Short-time working occurs when employees are laid off for a number of contractual days each week, or for a number of hours during a working day
TUPE	Transfer of Undertakings (Protection of Employment) Regulation 2006
Unfair dismissal	An unfair dismissal happens when you are dismissed from your job and your employer doesn't have a valid reason for dismissing you and/or has acted unreasonably

