



Guide to the Insolvency Payments Scheme

**Department of Enterprise
Trade and Innovation
www.deti.ie**

**PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY)
ACTS 1984 TO 2004**

Guide to the Insolvency Payments Scheme

**Department of Enterprise,
Trade and Innovation**

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This Guide and the relevant forms are available from the Department of Enterprise, Trade and Innovation, Davitt House, Adelaide Road, Dublin 2. They are also available on the Department's Website at www.deti.ie.

The Guide is a general guide to the Insolvency Payments Scheme, but it is not intended to be a legal interpretation of the legislation. Further information on the Scheme is available from the *NERA Information Service* of the Department of Enterprise, Trade and Innovation, Telephone (059) 9178990 or LoCall 1890 80 80 90. E-mail: www.employmentrights.ie/en/aboutnera/contacts/

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 2004. 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.

INSOLVENCY PAYMENTS SECTION
DEPARTMENT OF ENTERPRISE, TRADE AND INNOVATION
DAVITT HOUSE
65A ADELAIDE ROAD
DUBLIN 2.

Telephone:	(01) 631 2121
Fax:	(01) 631 3312
Lo-call (from outside 01 area)	1890 220 222
Web Site address	www.deti.ie

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1. QUICK GUIDE TO THE INSOLVENCY PAYMENTS SCHEME: QUESTIONS AND ANSWERS

Q1. What is the Insolvency Payments Scheme?

The Insolvency Payments Scheme is a scheme to protect pay-related entitlements of employees whose employer has become legally insolvent as defined in the Scheme. Under the Scheme, employees may claim - normally through the liquidator or receiver - arrears of pay, holiday pay, pay in lieu of statutory notice and various other entitlements that may be owed to them by their employer. Where a payment is made to an employee under the Scheme, his or her claim against the employer for that debt is transferred to the Minister for Enterprise, Trade and Innovation. All payments are made from the Social Insurance Fund, and certain conditions and limits apply to payments under the Scheme.

Q2. How does someone qualify for payment of entitlements under the Scheme?

The Scheme applies to employees employed in Ireland in employment that is fully insurable for social insurance purposes (this covers most employees) and whose employer is insolvent as defined in the legislation under which the Scheme operates. (See Q4 for more details.) The Scheme also covers employees who would be fully insurable but for the fact that they have reached 66 years of age.

Q3. What entitlements are covered by the Scheme?

Apart from arrears of pay, holiday pay and pay in lieu of statutory notice, the Scheme covers a wide range of entitlements that might be owed to employees by the employer, including awards made to them under employment rights legislation covering such issues as unfair dismissal, discrimination, working time and the minimum wage. Certain unpaid pension scheme and personal retirement savings account (PRSA) contributions are also covered. Further details are contained in Paragraphs 5 and 10 of this guide

Q4. When is an employer insolvent as defined for the purposes of the Scheme?

An employer is insolvent for the purposes of the Insolvency Payments Scheme if:

- The business is in liquidation
- The business is in receivership
- The employer is legally bankrupt
- The employer has died and the estate is being administered under the relevant legislation
- The employer is insolvent under the legislation of another EU Member State.

Further details are contained in Paragraph 3 of this guide.

Q5. If a business shuts down without becoming legally insolvent as defined for the purposes of the Scheme, can an employee obtain payments under the Scheme?

The Insolvency Payments Scheme does not cover such cases. For an employee to come within the Scheme, an employer must be legally insolvent under the legislation under which the Scheme operates. If a business shuts down without becoming legally insolvent as defined for the purposes of the Scheme, the employer remains responsible for the payment of employees' pay and other entitlements.

Q6. Are there any limits to the payments that may be made under the Scheme?

Some limitations and conditions apply to payments made under the Scheme. All entitlements based on pay are limited to a maximum weekly rate which is revised periodically. The current limit where insolvencies occurred on or after 1 January 2005 is €600 per week. There is also a limit of eight weeks for arrears of pay, sick pay, holiday pay and pay in lieu of statutory notice. In most cases, the Scheme covers entitlements relating to the period of eighteen months prior to the date of the insolvency of the employer or the termination of employment. In the case of an award made to an employee - for example, an unfair dismissal award - the eighteen-month period applies to the date of the award. An award may also have a date that is later than the date of insolvency. Any revised limits and conditions will be included in the Guide to the Scheme on the Department's website.

Q7. Are payments under the Insolvency Payments Scheme taxed?

Payments under the Insolvency Payments Scheme are generally taxable. However, queries concerning tax should be addressed to the Revenue Commissioners. Tax and PRSI deductions are usually made by the liquidator or receiver. Queries about tax should be addressed to the Revenue Commissioners.

Q8. How can entitlements be claimed?

Claims are made through the person legally appointed to wind up the business (normally the liquidator or receiver), who will certify them from the records available, then send them to the Insolvency Payments Section of the Department of Enterprise, Trade and Innovation to be processed. When the claims have been processed, payments are made to the liquidator, receiver, etc., who will pay the employees concerned, having made any statutory tax or other deductions. Claims are made on forms available from the Department of Enterprise, Trade and Innovation or its website. The forms are often provided by the liquidator or receiver.

Q9. How long does it take for a claim to be paid?

The Insolvency Payments Section aims to process claims that are valid and do not have to be clarified or queried within four weeks of receiving them from a liquidator or receiver. However, this can vary, depending on the level of claims on hand at any particular time. This does not, of course, include the time it takes for a liquidator or receiver to collect, process and verify claims before sending them to the Department for payment and to process and distribute payments received from the Department.

Q10. If a claim is refused, can a person appeal?

An employee who has submitted a claim for a payment under the Scheme in relation to arrears of pay, sick pay, holiday pay or outstanding occupational pension scheme or PRSA contributions and whose claim has been refused may appeal the decision to the Employment Appeals Tribunal. An appeal may also be made to the Tribunal if the employee considers that the payment made is less than the amount claimed. The appeal should be made within six weeks of the decision being communicated, though the Tribunal may extend the period in certain circumstances.

Q11. Who can answer queries about a claim?

The liquidator or receiver, who has access to the employer's records and certifies the claim, would normally be able to answer queries about the amounts due to the employee. Other queries can be directed to the Insolvency Payments Section of the Department. General enquiries about the Insolvency Payments Scheme should be directed to the Employment Rights Information Unit of the Department. Contact numbers and other information may be found on page 3 of this Guide.

Q12. How is the Insolvency Payments Scheme Funded?

Payments from the Insolvency Payments Scheme are made from the Social Insurance Fund, which also funds the Redundancy Payments Scheme. Where a payment is made to an employee under the Insolvency Payments Scheme, the employee's claim against the insolvent employer for that entitlement is transferred to the Minister for Enterprise, Trade and Innovation. Any part of that claim that is recovered in the final winding-up of the business is paid back into the Social Insurance Fund.

Q13. Does a claim under the Insolvency Payments Scheme affect an employee's statutory Redundancy entitlement?

No. The Redundancy Payments Scheme is quite separate from the Insolvency Payments Scheme and does not affect an employee's statutory Redundancy entitlement.

2. PURPOSE OF 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. These entitlements are listed in Paragraphs 5 and 10, and are subject to the limits and conditions outlined in Paragraph 6. Payments under the Scheme are made from the Social Insurance Fund. The types of insolvency covered by the Scheme are outlined in Paragraph 3.

3. WHEN AN EMPLOYER IS INSOLVENT AND THE DATE OF INSOLVENCY

The circumstances and date of insolvency for the purposes of the Scheme are set out in sections 1(3) and 4(1) of the Protection of Employees (Employers' Insolvency) Act 1984 (referred to elsewhere in this Guide as "the 1984 Act"). 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

- | | |
|---|---|
| (a) Liquidation or Receivership: - where the employer is a company and a winding up order is made or a resolution for voluntary winding up is 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, or on which possession is taken of the property or, in certain circumstances, the date of the passing of a resolution to wind up a company |
| (b) 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 |
| (c) 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 |
| (d) 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. (This applies to insolvencies occurring on or after 8 October 2005). | The date on which the insolvency was established under the legislation of the Member State concerned. |

4. 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.

5. ENTITLEMENTS COVERED BY THE SCHEME

Subject to the overall limits and conditions outlined in Paragraph 6 of this booklet, 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, BUPA, 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. 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 not 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.

9. Certain arrears of pension or PRSA contributions not paid into the pension scheme or PRSA (see Paragraph 10).

6. LIMITS AND CONDITIONS ON PAYMENTS

- (a) 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.
- (b) 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.
- (c) 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.

7. HOW AN EMPLOYEE SHOULD MAKE AN APPLICATION

- (a) In the case of a claim for outstanding wages, sick pay, holiday pay or minimum notice entitlements, an employee should complete Form EIP1.
- (b) In the case of any other entitlement under the Scheme (apart from pension scheme contributions), an employee should complete Form EIP4.

The completed application form(s) should be forwarded to the insolvent employer's representative (the liquidator or receiver) - referred to in the forms and legislation as a Relevant Officer.

8. CERTIFICATION OF EMPLOYEES' CLAIMS AND FORMS TO BE SUBMITTED TO THE DEPARTMENT OF ENTERPRISE, TRADE AND INNOVATION

The insolvent employer's representative – normally the liquidator or receiver - examines the employee's claim and certifies the amount owed to the employee. Outstanding entitlements other than pension scheme and PRSA contributions are certified on Form EIP3. Pension scheme and PRSA entitlements are certified on Form EIP6. The completed Forms EIP3, or EIP6 as appropriate, together with the original copies of the employees' applications (Forms EIP1 and EIP4) are forwarded to the Insolvency Payments Section of the Department of Enterprise, Trade and Innovation to be processed.

9. 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 appropriate statutory deductions - income tax, PRSI, etc. - from these payments.

10. 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 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 :-

- (a) 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
- (b) 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.

Where a pension scheme does not provide for the liability described at (b), only (a) will apply.

Similar entitlements and conditions apply to unpaid PRSA contributions.

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.

The application for payment of outstanding contributions should be made on Form EIP6. Part 1 of the Form should be completed by a person competent to act in respect of the scheme. Part 2 of the Form should be completed by the insolvent employer's representative, who should send the Form to the Department. A Form EIP7 (Actuarial Certificate) is required where an employer's contributions are claimed and a pension scheme provides for a liability described at (b) above. Details of the occupational pension scheme or PRSA and supporting documents should be submitted with an application.

11. NOTIFICATION OF THE MAKING OF PAYMENTS AND DEDUCTIONS

The employer's representative is required to notify the Insolvency Payments Section of the Department of Enterprise, Trade and Innovation when the payments have been made to employees. The notification should set out any deductions made in respect of income tax, PRSI, pension contributions, etc.

12. TRANSFER OF EMPLOYEES' RIGHTS AND REMEDIES TO THE MINISTER FOR ENTERPRISE, TRADE AND INNOVATION (PREFERENTIAL PAYMENTS)

Section 10 of the 1984 Act specifies that where a payment is made from the Social Insurance Fund in respect of any debt payable under the Act to an employee, or any amount paid into the assets of an occupational pension scheme or PRSA, the rights and remedies of the employees concerned in respect of the amounts paid are transferred to the Minister for Enterprise, Trade and Innovation. In the final winding-up proceedings in liquidations, receiverships, bankruptcies, etc., the Minister becomes a creditor against the assets of the employer in respect of the amounts paid, subject to the statutory limits defined in company or bankruptcy legislation.

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.

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

- (a) 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:
 - (i) the payment made was less than the amount that should have been paid, or
 - (ii) the application has been refused.
- (b) 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.

14. 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 of the rates are available from the Insolvency Payments Section of the Department. Applications for payment of fees are made on Form IP8.

15. 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.

16. 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.

17. OFFENCES

Most 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.