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Trade and Employment

# Information Handbook

## Rights and Remedies Available to Employees Facing a Collective Redundancy Situation

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## Contents

<b>1. Introduction .....</b>	<b>3</b>
<b>2. Collective Redundancies.....</b>	<b>4</b>
What is a collective redundancy?	4
What are my rights as an employee in a collective redundancy scenario?	4
Statutory Redundancy	6
Collective Agreements	7
<b>3. Company Insolvency.....</b>	<b>8</b>
What exactly is the Role of the Liquidator?	9
What are my Rights as an Employee in an Insolvency Situation?	10
<i>Preferential Creditor Status .....</i>	<i>10</i>
<i>Statutory Redundancy .....</i>	<i>12</i>
<i>The Insolvency Payments Scheme.....</i>	<i>12</i>
<i>Right to Information in a Liquidation .....</i>	<i>13</i>
<i>Powers to Intervene in a Liquidation .....</i>	<i>14</i>
<b>4. Summary.....</b>	<b>16</b>

## 1. Introduction

Ireland's legal framework provides protections to employees in situations of redundancy. A redundancy refers to a situation where an employee's position ceases to exist and the employee is not being replaced. For instance, a redundancy can arise where an employee's contract of employment is coming to an end, his or her employer is restructuring or closing the business, or because the business is insolvent and is no longer allowed to trade.

This handbook aims to ensure that employees are aware of the protections that exist for employees whose term of employment is ending because their position is no longer available and is not about to be replaced. The most relevant pieces of information have been brought together to ensure that employees are fully informed of their rights and can act accordingly.

While the aim of this information handbook is to give general advice in relation to an employee's legal rights in a redundancy situation, there is a particular focus on the rights of those employees facing a collective redundancy. Separately, information is also included for employees whose positions are no longer available because the business is unable to pay its debts, that is, it has become insolvent. It is very important that employees understand that while both circumstances mean that their contract of employment is coming to an end, a collective redundancy arising in circumstances where the business is solvent is legally different from that where a redundancy arises because the company/employer is insolvent.

The following sections give practical explanations of relevant employment rights contained in redundancy and insolvency legislation. There are also separate interventions and remedies contained in the company law frameworks and these are listed at the end of this handbook. These company law remedies are a matter for the Courts.

Please note that, while this handbook is intended to provide general guidance based on Irish law to employees in a collective redundancy situation, it does not contain legal advice and should not be relied on as a substitute for specific legal advice relevant to particular circumstances.

## 2. Collective Redundancies

Collective redundancy situations arise in the normal course of working and business life. A redundancy arises where you lose your job due to circumstances such as the closure of the business or a reduction in the number of staff. A redundancy occurs where an employee's position is no longer required by the employer and where that employee is not replaced by another.

### What is a collective redundancy?

Collective redundancies are situations where, during any period of 30 consecutive days, the number of redundancies is:

- 5 or more employees, where 21-49 are normally employed in an establishment,
- 10 or more employees where 50-99 are normally employed in an establishment,
- 10% or more of the employees where 100-299 are employed in an establishment, or
- 30 or more employees where 300 or more are employed in an establishment.

### What are my rights as an employee in a collective redundancy scenario?

An employer that proposes to create collective redundancies must do a number of things to comply with the Protection of Employment Act 1977.

Firstly, the employer must notify the Minister for Enterprise, Trade and Employment of the proposed collective redundancy at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.

Employers must also initiate consultations with employees' representatives. The legislation details a number of conditions that these consultations must meet.

Consultations must take place at least 30 days before the first notice of dismissal is made and the law requires employers to engage in a consultation process 'with a view to reaching an agreement'.

The employer must provide the employees' representatives with all relevant information relating to the proposed redundancies. Relevant information that is required by law includes:

- The reasons for the proposed redundancies,
- The number, and descriptions or categories, of employees whom it is proposed to make redundant,
- The number of employees, and description or categories, normally employed,
- The period during which it is proposed that the redundancies will take place,
- The criteria proposed for the selection of the workers to be made redundant, and
- The method for calculating any redundancy payments over and above those methods set out in the Redundancy Payments Acts.

An employer who fails to initiate consultations as described above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.

A complaint can be made to the Workplace Relations Commission if you feel that your employer has failed to hold consultations as outlined above.

Further information on how to make a complaint can be found on the [WRC Website](#) and they can also be contacted by phone at (059) 9178800 or at LoCall 0818 808090.

### Statutory Redundancy

If you are being made redundant by your employer, the Redundancy Payments Act 1967 gives you, as an employee, a number of protections that you should be aware of.

All eligible employees being made redundant are entitled to a statutory lump sum payment.

To be an eligible employee, you must meet all of the following conditions:

- You must have 104 weeks of employment with the same employer;
- Your employment must be fully insurable under the Social Welfare Acts;
- You must be over 16; and
- Your job must no longer exist.

If you are an eligible employee, then you are entitled to a minimum redundancy payment equivalent to 2 weeks' pay for every year of service plus 1 additional bonus week, subject to a maximum of €600 per week.

In accordance with the Redundancy Payments Act, the employer must pay statutory redundancy payments to all eligible employees.

The Redundancy Payments Scheme provides for a payment from the Department of Social Protection to an employee where an employer is unable to make a redundancy payment. If your employer is unable to pay your statutory redundancy payment, an application can be submitted by the employer to the Department of Social Protection through the Redundancy Payments Scheme. The State, via the Department of Social Protection, can then pay you your redundancy entitlements from the Social Insurance Fund.

Further information on the Redundancy Payments Scheme is available on the [Gov.ie](https://www.gov.ie) website.

If an employer disputes that a redundancy situation exists or refuses to pay statutory redundancy, you can make a complaint to the Workplace Relations Commission (WRC).

Further information on how to make a complaint can be found on the [WRC Website](#) and they can also be contacted by phone at 059 9178800 or LoCall 0818 808090.

### Collective Agreements

Collective agreements are made by or on behalf of an employer and a representative employee body which governs pay and other conditions of employment. Collective agreements are a matter for the parties who have mutually agreed to the terms of the agreement. Some collective agreements may contain detail about the redundancy payments an employer agrees to pay employees in the event of redundancy.

It is important to understand that the minimum an employer is obliged to pay eligible employees under law is the statutory amount as outlined above in the previous section. If an employer has made a voluntary commitment under a collective agreement to pay over and above statutory redundancy entitlement that any eligible employee is guaranteed under law, this is an obligation on a solvent employer only.

For example, a collective agreement that was agreed to facilitate the restructuring or downsizing of a business will not create a legally enforceable entitlement for workers to those enhanced terms under different circumstances, such as where the business subsequently becomes insolvent. This is because the employer may not have the means to honour that enhanced redundancy agreement due to its current financial situation.

Where an employer cannot pay redundancy to its workers, the State's Social Insurance Fund provides a safety net for employees to ensure they receive their statutory entitlements. The Social Insurance Fund can only provide for statutory redundancy payments. It cannot be used to supplement or 'top-up' redundancy payments to honour a collective agreement for enhanced payments agreed between an employer and its employees.

### 3. Company Liquidation

Sometimes collective redundancies arise out of company liquidations. Liquidation, also referred to as winding-up, is the process at the end of which the company no longer exists. Liquidation is the legal ending of a limited company. In these situations, the company generally stops all activities, pays off its debts from any available assets and winds up in an orderly way. A liquidator is appointed to oversee this process.

Liquidators can be appointed by:

- the members (owners);
- creditors; or
- the court.

If the members appoint a liquidator, it is known as a voluntary liquidation. This type of liquidation usually involves a **solvent** company, that is, a company that can pay its debts as they fall due.

If the creditors appoint a liquidator, it is called a creditors' voluntary liquidation and the creditors as a group supervise the liquidation. This type of liquidation involves an **insolvent company**, that is, a company that cannot pay its debts as they fall due or has more liabilities than assets on its balance sheet. The company is obliged to ensure the creditors are made aware of their right to form and participate on a committee of inspection which represents the interests of all creditors of a company going into liquidation. There is a dedicated position for an employee representative on the committee of inspection.

If a court appoints a liquidator, it is called an official (or compulsory) liquidation. In this type of liquidation, the court supervises the liquidation with the help of a specially appointed court officer. A creditor may ask the court to appoint a liquidator. The liquidator is also obliged to ensure creditors are made aware of their right to form and participate on a

committee of inspection established to oversee a liquidation; there is a dedicated position for an employee representative on the committee of inspection.

The Government cannot interfere with any liquidation process. The liquidator has a statutory responsibility to realise the assets of the company and distribute to creditors in accordance with law.

#### What exactly is the Role of the Liquidator?

The role of the liquidator is to wind up the company. Their main duties are:

- to take possession of company property including its financial records;
- to list the people who are owed money and how much they are owed;
- to list the people who must contribute to the company's assets on its winding up and how much they have to pay;
- to investigate the company's affairs;
- to sell the company's assets;
- to pay the company's debts in the order the law states;
- to give any remaining money to the members in line with their entitlements;
- to report any suspected criminal offence by the company, a past or present director or company secretary, or any member to the Office of the Director of Corporate Enforcement (ODCE) and the Director of Public Prosecutions.

Where a company is insolvent, the liquidator must:

- give the ODCE – within 6 months of appointment – a report about the company directors' conduct in the period leading up to the liquidation, and

- ask the court to restrict the directors for a certain time from being involved in other companies.

A person can only be appointed as a liquidator if they meet one of the following conditions:

- they are a member of an accountancy body approved by the Irish Auditing and Accounting Supervisory Authority (IAASA), and hold an up-to-date practising certificate from that body;
- they are a practising solicitor and hold an up-to-date practising certificate from the Law Society of Ireland;
- they are a member of a professional body recognised by the IAASA and are authorised to act as a liquidator;
- they are qualified under the laws of another European Economic Area (EEA) state to act as a liquidator in insolvency proceedings in Ireland; or
- they have practical experience and relevant knowledge of winding-up a company and are authorised by IAASA to act as a liquidator.

It is an offence under the Companies Act 2014 to act as a liquidator without the appropriate qualification.

### What are my Rights as an Employee in an Insolvency Situation?

#### *Preferential Creditor Status*

A creditor is a person (such as an employee) or entity (like a company) to whom a debt is owed. In an insolvency, creditors can include the company's employees (who may be owed wages or other contributions), the State (which may be owed taxes and other statutory contributions), suppliers, and customers (where they have made deposits or other prepayments).

The Companies Act 2014 sets out the order in which all of these creditors are to be paid in an insolvent liquidation. Employees whose employer becomes insolvent are protected by being afforded preferential creditor status in this order. This means that monies owed to them are treated as more important than the debts of certain other creditors.

The following payments to employees have preferential status:

- Wages and salaries up to a maximum of €10,000 per employee,
- Holiday payment,
- Compensation and damages for uninsured accidents,
- Sickness and superannuation payments,
- Claims for unfair dismissal,
- Claims for minimum notice payments,
- Statutory redundancy payments, and
- Social welfare contributions.

These payments are to be paid ahead of ordinary and unsecured creditors.

Any ex-gratia payments that an employer has promised employees beyond their legal obligations, such as under a collective agreement, is a private matter between the employees and the employer. Preferential creditor status only guarantees payment of what an employer is legally obliged to pay. It is important to understand that the liquidator is under a legal obligation to distribute any moneys as prescribed by company law.

### *Statutory Redundancy*

Statutory redundancy owed to employees is protected by preferential creditor status. If an employee is eligible for a redundancy payment following redundancy as a result of the liquidation, this must be paid by the liquidator to employees before other debts.

In a situation in which the liquidation does not generate enough to pay all the redundancy entitlements to employees, then the liquidator will make an application to the Redundancy Payments Scheme. Statutory redundancy will then be paid directly to the employee by the Department of Social Protection.

The State will only pay an employee's statutory redundancy entitlement. The State will not cover an amount over and above the statutory entitlement that may have been agreed as part of a collective agreement. Negotiations on redundancy packages over and above the statutory entitlement are a voluntary matter between the liquidator and former employees, but only where the company concerned is solvent.

There is no legal scope for the Government to use the Social Insurance Fund to supplement or 'top-up' redundancy payments to honour a collective agreement between an employer and its employees.

### *The Insolvency Payments Scheme*

While preferential creditor status means that an employee's entitlements must be paid before ordinary and unsecured creditors, sometimes the amount of money generated in a liquidation is not enough to cover these entitlements. The Insolvency Payments Scheme provides for a payment to be made to the employee by the Department of Social Protection. The Scheme protects the former employees of companies that have become legally insolvent where there is not enough money to cover entitlements.

An employee may claim, through an employer representative such as the official liquidator or receiver, to have their entitlements paid under the Scheme. The outstanding debts covered include:

- Arrears of wages and sick pay
- Outstanding holiday pay
- Unpaid statutory minimum notice
- Certain arrears of pension contributions
- Various statutory awards made by the Workplace Relations Commission (WRC).

Under this scheme, payment is made to the liquidator so that appropriate tax deductions (if applicable) can be made before the correct payments are paid to the former employee.

Further information on the Insolvency Payments Scheme is available on the [Gov.ie](https://www.gov.ie) website.

#### *Right to Information in a Liquidation*

An employee, as a creditor, has rights to certain information during a liquidation.

Where a court has made a winding-up order or appointed a provisional liquidator, a statement on the affairs of the company must be made out and filed with the court within 21 days. This statement outlines the financial position of the company and details the company's assets, debts, and liabilities, among other items. Employees, as creditors of the company, are entitled to inspect and be provided with a copy of this statement.

Employees can also apply to the court for a determination on any question arising from the insolvency and the winding-up of a company. They may also apply to court to request an inspection of the accounting records, books and papers of the company.

Where the winding-up of a company is not concluded within 12 months after the date of its commencement, the liquidator must present an interim report and provide updates on the

progress of the liquidation. These reports (Form E4) must be filed with the Companies Registration Office (CRO) and are accessible on the CRO website [www.cro.ie](http://www.cro.ie).

#### *Powers to Intervene in a Liquidation*

The Companies Act 2014 contains provisions which may be used by a liquidator or a creditor (including an employee) of an insolvent company in appropriate cases. These options are in addition to other protections available under employment rights legislation.

**These protections involve taking legal action (or litigation) and therefore a creditor should seek independent legal advice before deciding on whether to take any of the following actions.**

- On the application of the liquidator or any creditor or contributor, the court can hold a related company liable for the debts of a company being wound up in circumstances where the related company was involved in the management of the insolvent company or in other misconduct. This means that the related company may be ordered to contribute to the debts of the insolvent company in order to provide a fairer outcome for creditors.
- The powers of the controllers of the company to dispose of assets before it is wound up are restricted. This is intended to deal with situations where a company pays a particular creditor in the period before it is wound up in order for this creditor to be treated more favourably than others and therefore to be given an unfair preference.

A transaction that is an unfair preference that is made within 6 months of the winding-up of the company is invalid. Furthermore, if the preferential transaction is made in favour of a connected person, it is invalid where it is made within 2 years of the commencement of the winding up. A “connected person” is defined in the Companies Act to include a spouse, a civil partner or relatives of a director such as brothers or sisters or a child.

- Where the liquidator can establish that the effect of the transfer of assets has been to defraud the creditors, the company or its members, the court can order the return of those assets which have been improperly transferred. The liquidator, a receiver of the property of the company or any creditor or contributory can make an application to the court where they consider an officer of the company or other person has been party to the conduct of the business in a reckless manner. The court then has the power to declare that such a person will be personally obliged to pay these debts. A “contributory” is a technical term that is defined in the Companies Act to mean any person who is legally obliged to contribute to the assets of the company in a winding up.
- An application can be made to the court by the ODCE, the liquidator or any creditor (including an employee) seeking that the court examine the conduct of the promotor, officer, liquidator, examiner, or receiver.

Where a person has been guilty of any wrongdoing, the court can order that person:

- a) to repay or restore the money or property or any part of it respectively with interest at such rate as the court thinks just, or
  - b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.
- The court also has the power to assess damages against a director of the company’s holding company where they have been guilty of wrongdoing in relation to the assets or affairs of any subsidiary.

## 4. Summary

There are a range of protections for an employee who is made redundant. These supports and protections are available in the areas of employment law and company law. They include legal rights under the Protection of Employment Act 1977 and the Redundancy Payments Act 1967, backed by financial remedies and support provided by the State in cases of insolvency. There are also rights of access to high quality information, and powers to recover assets from a company related to an insolvent company where there has been a wrongdoing.

An employee who is aware of his or her rights will be better able to make practical use of these valuable safeguards.

The development of this information handbook is part of a bigger project in the Department of Enterprise Trade and Employment to enhance the protections to employees in collective redundancy situations. As part of this project, there are a number of legislative changes proposed to further protect the rights of workers. Information on these legislative proposals is available in the *'Plan of Action - Collective Redundancies following Insolvency'* document which can be found on the [Gov.ie](https://www.gov.ie) website. This information handbook will be updated as these changes to the existing legislation are introduced.