



## **INSOLVENCY ADMINISTRATION**

### **EMPLOYEES' CLAIMS IN THE CASE OF EMPLOYER'S INSOLVENCY**

#### **General Questions**

##### **Where to find information on the employer's insolvency?**

Information about employer's insolvency proceedings is available to everyone free of charge in the Insolvency Register (web site - [http://ws.ur.gov.lv/urpubl?act=mnp\\_pjur](http://ws.ur.gov.lv/urpubl?act=mnp_pjur)). Entries in the Insolvency Register are authentic and contain information provided for by the law: details on the subject of insolvency and the administrator of insolvency proceedings, as well as the information on the course of insolvency proceedings starting from the proclamation and ending with the completion of insolvency proceedings. The competent authority placing entries in the Insolvency Register is the Register of Enterprises of the Republic of Latvia.

##### **What kind of implications the proclamation of insolvency proceedings will have?**

Employers' insolvency proceedings are announced by the court, and its judgement is final and without appeal. When announcing the opening of insolvency proceedings the court appoints an administrator.

The employer (the debtor) shall lose the right to act with all his or her property, as well as with the property of a third party that is possessed or held by the debtor, and these rights shall be acquired by the administrator. The activity of the administrative institutions of the debtor shall be suspended, and all administrative of the debtor shall be performed by the administrator.

The administrator has all the rights, duties and responsibilities of administrative bodies provided for in regulatory enactments, the articles of association of the debtor or in contracts.

The administrator has the right to appoint officials for the performance of the administrative work of the debtor and determine their competence, and to hire and dismiss employees, including those who were employed before the day of the proclamation of the insolvency proceedings. The provisions of Section 101, Paragraph one, Clauses 9 and 10 of the Labour Law (staff reduction, liquidation of the employer) shall be considered to be lawful grounds for the termination of the employment contract, and the provisions of Section 103, Paragraph one, Clause 3 of the Labour Law regarding the time period for the termination of an employment contract shall not be applied. If an employee has entered into a collective agreement, the administrator has the right not to apply the norms thereof regarding the termination of an employment contract, including the costs related to the termination. The norms of the Labour Law regarding collective redundancy aren't to be applied to the insolvency proceedings of a legal person.

##### **What to do if the employer has failed to pay the estimated amounts?**

If the employer has failed to pay the amounts due to the employee, the employee shall submit a creditor's claim according to the provisions set out in Section 73 of the Insolvency Law.

##### **How to prepare the creditor's claim?**

The creditor's claim shall be prepared in the form of an application, and following details are to be indicated there: grounds for the claim, type of claim (e.g., the wage, the severance allowance), amount of the claim (the due amounts), time the claim arose (unpaid period/ the time, when the employee's right to the payment has been established), contact information of the employee (including electronic mail address), bank account number. The creditor's claim must also contain information on whether the employee is recognised as an interested person within the meaning of Section 72 of the Insolvency Law. Substantiating documents shall be appended to the submission (documents held by the employee, e.g., the employment contract, the termination notice, orders, certificates). In exceptional cases the creditor, by agreeing with the administrator before submitting the claim, may not submit the derivatives of the substantiating documents, if the documents justifying the claim are at the disposal of the debtor and there is no dispute between the debtor and the creditor regarding rights.

##### **To whom the creditor's claim shall be submitted?**

The creditor's claim shall be submitted to the employer's insolvency proceeding administrator. Information on the administrator of the employer and his or her contact details are to be found in the Insolvency Register.

##### **What is the deadline for submission of the creditor's claim?**

The creditor's claim shall be submitted within one month from the day when the entry has been made in the Insolvency Register regarding the proclamation of the insolvency proceedings of the employer.

If the employee has missed the above mentioned deadline he or she may submit his or her claim within a deadline not exceeding six months from the day when the entry has been made in the Insolvency Register, but no later than until the day when the plan for settling the creditors' claims has been formulated. The employee shall not be granted voting rights in this particular case.

##### **What are the consequences of a missed deadline for submission of the creditor's claim?**

If the employee has failed to submit the creditor's claim or missed the deadline referred to in Section 73, paragraph two of the Insolvency Law, the employee shall lose his or her creditor status and his or her claim rights against the employer.

##### **What happens after submission of the creditor's claim?**

The administrator shall inspect the validity of the creditor's claim and the compliance thereof with the requirements of regulatory enactments. Following inspection of the creditor's claim, the administrator shall take a justified decision regarding the recognition, non-recognition or partial recognition of the creditor's claim. The administrator shall not fully or partially recognise a creditor's claim about which a dispute exists between the employer and employee. The administrator may not recognise or partially recognise a creditor's claim which has been established by a court adjudication only if there is evidence that the employer has honoured his or her obligations fully or partially following the coming into effect of the court adjudication. The administrator shall take a decision regarding the recognition, non-recognition or partial recognition of the creditor's claim concerned within 15 days following the receipt of the creditor's claim. The administrator enters the information on the creditor's claim (Section 78 of the Insolvency Law) in the Register of Creditors' Claims.

**What can be done if the creditor's claim has been rejected?**

The employee is entitled to appeal to a court the decision of the administrator regarding the non-recognition or partial recognition of his or her claim within two weeks from the day of the receipt of this decision. The claim must be submitted to the court in which the respective insolvency proceedings have been proclaimed.

**What are the possibilities of settling an employee's claim in insolvency proceedings?**

You should take into account the fact that the estimated amounts are not necessarily paid in full to employees. In insolvency proceedings the employees' claims are settled either from the resources of the employer or from the resources of the guarantee fund for employees' claims. The settlement of employees' claims from the resources of the employer shall take place according to the provisions laid down in Section 118 of the Insolvency Law provided that funds are available for the settlement of creditors' claims in insolvency proceedings. The Insolvency Administration settles employees' claims from the resources of the guarantee fund for employees' claims according to the order and to the extent laid down by the Law on the Protection of Employees in the case of Employer's Insolvency and the Cabinet Regulation No.995 of 27th December 2011 on Procedures for Satisfaction of Claims of Employees of Insolvent Employers and Payment of Remuneration to Administrator.

**Where can I find additional information?**

- About the settlement of employees' claims and insolvency proceedings => **Insolvency Administration**, [www.mna.gov.lv/lv/](http://www.mna.gov.lv/lv/).
- About labour relations => **State Labour Inspectorate**, (<http://www.vdi.gov.lv/en/>).
- About taxes => **State Revenue Service** (<https://vid.gov.lv/default.aspx?hl=2>).
- About social insurance and benefits => **State Social Insurance Agency**, (<http://www.vsaa.gov.lv/en/about-ssia/objectives>).



## **INSOLVENCY ADMINISTRATION**

### **SETTLEMENT OF EMPLOYEES' CLAIMS FROM THE RESOURCES OF THE GUARANTEE FUND FOR EMPLOYEES' CLAIMS**

#### **What is the guarantee fund for employees' claims?**

The guarantee fund for employees' claims is provisioned from a part of the state duty for the business risk insurance, monetary gifts and donations, as well as from the sums recovered by administrators. Every year each employer, to whom insolvency proceedings of a legal person or insolvency of a credit institution may concern, pays the state duty for the business risk insurance (now 0.36 EUR for each employee according to Cabinet Regulation No.692 of 8th December 2015 on Procedures on the Business Risk Insurance Amount and the Amount of State Duty transferred to the Guarantee Fund for Employees' Claims in 2016) to secure the settlement of employees' claims from the resources of the guarantee fund for employees' claims. The resources of the guarantee fund for employees' claims are kept in the Public Treasury, and used only to settle employees' claims in the event of the employer's insolvency. The Insolvency Administration settles employees' claims from the resources of the guarantee fund for employees' claims on the basis of the administrator's application.

#### **Which claims can be settled from the resources of the guarantee fund for employees' claims?**

The listed unpaid employees' claims arising from the employment legal relationships are settled from the guarantee fund for employees' claims:

- 1) work remuneration for the last three months of employment in a 12 month period prior to the proclamation of the employer's insolvency proceedings;
- 2) reimbursement for the annual paid leave, the right to which is based on the 12 month period prior to the proclamation of the employer's insolvency proceedings;
- 3) reimbursement for other type of paid leave in the last three months of employment legal relationships within the 12 month period prior to the proclamation of the employer's insolvency proceedings;
- 4) severance pay in connection with the termination of employment legal relationships in the minimum amount specified in the law, the right to which was acquired not sooner than in the 12 month period prior to the proclamation of the employer's insolvency proceedings;
- 5) compensation for harm in connection with an accident at work or an occupational disease (for the full unpaid time period until the proclamation of the employer's insolvency proceeding (for payment to the employee), and the amount of compensation for harm for four years in advance shall be transferred to the special budget of the state social security to ensure further payments, which are performed by the State Social Insurance Agency;
- 6) payments of State social insurance mandatory contributions and personal income tax which are related to the above mentioned claims (are to be transferred to the respective state budget account).

#### **To what extent employees' claims can be settled from the guarantee fund for employees' claims?**

You should take into account that employees' claims are settled from the guarantee fund for employees' claims only to a limited extent. The payments from the guarantee fund for employees' claims, on which the applications have been submitted to the Insolvency Administration prior 31 December 2011, shall not exceed four statutory minimum wages (gross) for the settlement of one employee's claim. The amounts, which are due to the employee, are calculated in accordance with the national legislation setting out the terms of calculation of salaries and other related payments on the basis of the information reflected in the employer's bookkeeping system (including the working time structure, working time accounting, salaries, advance payments a. o.), or on the basis of the decision of a competent authority or a court adjudication, taking into account also the fact that the employee's salary per month should not exceed the statutory minimum wage as it has been set in the day, when the employer's insolvency event occurred. The employer's insolvency event occurs on the day of the proclamation of insolvency proceedings by the court.

#### **Prerequisites for the settlement of claims:**

- 1) employer's insolvency proceedings have been announced;
- 2) contractual labour relationships existed or still exist (have not been interrupted) between the employee and employer;
- 3) the employee has submitted the creditor's claim to the administrator;
- 4) the administrator has taken the decision on the recognition of the creditor's (employee's) claim and entered it into the Register of Creditors' Claims.

At the same time, consideration must be taken of the fact that the resources of the guarantee fund for employees' claims should be used for a particular purpose, i.e., for the settlement of unpaid claims within a certain period. Thus the confirmation and allocation of funds for the settlement of employees' claims from the guarantee fund for employees' claims requires the substantiation of all sums, which are claimed to be unpaid.

#### **Application on the settlement of employees' claims**

The application on the settlement of claims of employees, whose employer becomes insolvent, shall be submitted to the Insolvency Administration by the administrator. The administrator submits the application, which is completed according to the Cabinet Regulation No.995 of 27th December 2011 laying down the rules for the submission, examination and settlement of the claims of employees, whose employers are insolvent, and payment of the administrator's remuneration, and lists of employees, as well as employer's bookkeeping and human resources administration documents substantiating each claim of each employee, or other documents, which justify employees' claims and their amount.

#### **Decision on the settlement of employees' claims from the guarantee fund for employees' claims**

The Insolvency Administration takes the decision on granting funds for the settlement of employees' claims, or on refusal to grant funds in full or partially within one month following the day when all documents, which are necessary for the decision, have been received.

#### **Payment of funds from the guarantee fund for employees' claims**

Depending on the budget capacity, the Insolvency Administration transfers the sums due to the employee to the account of the employer for the further payment to the employee, and payments of State social insurance mandatory contributions and personal income tax, as well as the amount of compensation for harm for four years in advance shall be transferred to the respective account of the state budget.

**Payment of funds from the guarantee fund for employees' claims to the employee**

The payments of funds received from the guarantee fund for employees' claims are arranged and ensured by the administrator. The administrator pays the funds from the guarantee fund for employees' claims to the employee, or transfers them to the bank account specified by the employee:

- 1) as soon as possible, however, no later than within one month following the day when the Insolvency Administration has transferred the funds to the bank account of the insolvent employer;
- 2) within limits of the amount granted by the Insolvency Administration.

The administrator is not entitled to use the funds received from the guarantee fund for employees' claims for other purposes. The administrator shall submit to the Insolvency Administration a report on use of these funds, and the Insolvency Administration checks the conformity of use of the funds from the guarantee funds for employees' claims with the statutory obligations.