

Insolvency and Redundancies



When a company goes into administration or liquidation it usually results in wide-scale redundancies. And those redundancies are made instantly, without any prior warning.

This gives rise to a claim that not everyone knows about – a Protective Award claim.

A Protective Award claim is a stand-alone claim and is different from claims for redundancy pay or notice pay for example, which are made via the RP1 and RP2 claim form process. Companies and/or administrators will usually tell you how to claim your redundancy pay, holiday pay and notice pay but they will not tell you that you might be able to make a Protective Award claim and many people have never heard of this type of claim before.

Protective Award Claim

Where an employer is proposing to make 20 or more employees redundant at an ‘establishment’ (i.e. a workplace) there is a duty to consult with appropriate representatives for a minimum period of 30 days (or 45 days if more than 100 are to be dismissed).

‘Appropriate representatives’ are either a recognised Trade Union or elected Employee representatives, or where there are neither, the employer must hold elections to appoint representatives for the purpose of redundancy consultation. Where the employer does not comply with these obligations, a claim can be brought in the Tribunals for a Protective Award.

It is essential that more than 20 redundancies are made at a single workplace, otherwise no claim can be pursued regardless of how little consultation took place.

If there were appropriate representatives, then they must pursue the claim on behalf of those made redundant but this is often a complex issue.

Why use a solicitor and not just pursue the claim yourself?

- **Time limits**

There are strict time limits to comply with and a specific procedure that must be followed before they expire.

A redundant employee only has 3 months (less one day) from the date the redundancies to which the complaint relates are made to start an Employment Tribunal (ET) claim.

It is a legal requirement that ACAS must first of all be contacted under the Early Conciliation procedure within this time limit before a claim can be submitted to the Tribunal. If that process isn't completed properly it will be fatal to a claim.

If the process is completed properly, the time limit for submitting a Protective Award claim can be extended, but it is complex as it depends on when ACAS are contacted and how long ACAS are involved. Missing a time limit automatically prevents an employee from pursuing a claim.

- **Permission**

In order to bring a claim against a company in administration, permission to pursue the claim must either be obtained from the administrators or the Courts. If the company enters into a certain type of liquidation permission can only be obtained from the Court. The restriction on pursuing claims is designed to protect the company and its creditors. This adds complexity and often administrators will refuse to grant permission to pursue a Protective Award claim.

A solicitor can handle the application process and make sure permission is secured to proceed. Where permission is refused, the Court application process is not easy to deal with.

- **Complexity**

The legal issues in these claims are complex.

Once claims are issued they will probably be defended by the administrators/liquidators because they are under a duty to keep the amount of money owed to creditors to a minimum.

More often than not these claims go to a full hearing, at which the Tribunal will need to decide whether the claims succeed. The Employment Tribunal will probably need to consider whether the company has a defence in showing there were 'special circumstances', which meant that they did not have time to consult. The special circumstances defence is complex and any number of reasons could potentially give the insolvent company a defence to the claim. A solicitor will know the best way to address that.

The Employment Tribunal will also need to decide what size Protective Award to make, which can be up to 90 days' gross pay per employee. Where there are mitigating circumstances or where some consultation has occurred before or after the redundancies, administrators/liquidators often argue the award should not be as much as 90 days. A solicitor will know the best legal arguments available to secure the maximum award.

- **Follow Up Work**

Whilst an award can be up to 90 days' gross pay per employee, if the company is insolvent, the employee won't recover all of that as compensation.

Where a company is insolvent, the Protective Award can be paid by the Government's Insolvency Service out of the National Insurance Fund but the payment is subject to limits. If paid by the State, the Protective Award will be capped at a maximum weekly amount and an employee can only claim a maximum of 8 weeks (56 days).

The amount payable can also be reduced if payments have already been made for non-payment of wages and would be subject to further deductions for tax, National Insurance and Jobseeker's Allowance.

Any balance of compensation will then be an unsecured debt against the company and the payment of any further compensation will depend whether there are any funds to pay out to creditors by way of dividends.

A solicitor can handle all of the follow up correspondence with the Insolvency Service and make sure that they have all the necessary information to process your claim.

Why use Morrish?

In all Protective Award cases we carry out a review of the potential claim for free and where there is a viable claim and a large enough litigation group, we can act under a damages-based agreement, meaning legal fees for representation are only payable if the case is successful out of compensation actually recovered.

The bigger the group of redundant employees that pursue the claim as a group, the better the deal we can offer with regards to fees.

Morrish Solicitors LLP has vast experience in bringing multiple Protective Award claims for employees from across the UK, having brought these types of claims for many years, winning and securing full protective awards for thousands of employees.

For example, we have successfully represented employees in claims against Phones4u, Austin Reed, City Link, Bezier, Oakworth Joinery, 2e2, Jarvis, 4Children and Aqua Interiors, to name but a few and some of these claims involved in excess of 250 employees. We can help small and large groups of employees and are currently pursuing many other protective award claims against other insolvent employers.

This Fact Sheet is for information only and is not intended to be a substitute for legal advice.

For more information on protected conversations and other Employment Rights, please call our Employment Rights team on 033 3344 9603.