

What is a Protective Award and am I entitled to one?



When collective redundancy (for 20 or more employees) or TUPE transfer situations arise, employers are under a statutory duty to collectively inform and consult with the representatives of affected employees (such as elected representatives or recognised Trade Unions).

Where employers have breached this duty, a claim can be brought in the Employment Tribunals. If the Employment Tribunal is satisfied that there has been a breach of the consultation requirements, they can make an order for a Protective Award, which may consist of compensation of up to a maximum of 90 days' gross pay in a redundancy situation or 13 weeks' gross pay in a transfer situation for each affected employee.

To clarify, employees (or former employees) may be eligible to bring Protective Award claims if they have either been:

- 1) dismissed on grounds of redundancy by their employer (or any insolvency practitioners) without consultation, or without sufficient consultation (so long as 20 or more employees have been affected);
or
- 2) transferred to another employer by way of a TUPE transfer without information and/or consultation, or without sufficient information/consultation.

There is no minimum amount of time employees must be employed to be able to bring Protective Award claims. The claims must, however, be commenced within 3 months (less 1 day) from:

- 1) the date of dismissal (in a collective redundancy situations); or
- 2) the date of the TUPE transfer (in TUPE transfer situations).

To bring a Protective Award claim in the Tribunal an employee must first enter into Early Conciliation via ACAS. Subject to correct compliance, this has the effect of extending the 3 months (less 1 day) time limit. However, the length of the extension varies, depending on when Early Conciliation is entered into and how long ACAS conciliation lasts. As such, it is always wise to seek legal advice well in advance of the initial 3 month (less 1 day) time limit.

As stated above, the maximum award a Tribunal can make to employees in successful Protective Award claims is 90 days'/13 weeks' gross pay for each affected employee. If your employer becomes insolvent (which is often the cause of mass redundancies) the Secretary of State may ultimately be obliged to pay the Protective Award. The Secretary of State will, however, only pay up to a maximum of 8 weeks' pay per employee, with a week's pay being capped at £489*. Any payment from the Secretary of State is paid by the Redundancy Payments Office out of the National Insurance Fund.

Why use us?

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. We are currently pursuing many claims against other employers. We will bring your claim to an end as soon as possible, providing regular communications and assisting you throughout.

We can carry out a free review of a potential protective award for free and if you have a viable claim, we could act for you on a 'no win, no fee' basis. If we did, we would bring your claim to an end as soon as possible, providing regular communications and assisting you throughout.

A major, relatively new, hurdle in commencing Protective Award claims is ET fees, which were introduced in July 2013. These fees are payable to an ET when Protective Award claims are issued, subject to valid remission applications. In multiple claims the amount of the fees varies depending on the number of employees issuing the claim. As such, the best approach in bringing proceedings in mass redundancy and TUPE situations is for all the affected employees to instruct the same law firm to act – Morrish Solicitors are always ready and able to speak to such employees.

*This figure will most likely be updated with effect from 6 April 2018.



For further information on protective awards and other Employment Rights, please call our Employment Rights team on 033 3344 9603 or email info@morrishsolicitors.com

Sign up to our monthly employment email update by emailing clair.watmore@morrishsolicitors.com

