

Bankruptcy, Receivership and Insolvency

Because of changes to federal bankruptcy and insolvency legislation, the Employment Standards Branch does not normally investigate wage complaints against employers who are in receivership or bankruptcy. Complaints against other insolvent employers are still handled through the Branch.

Wage Earner Protection Program

The Wage Earner Protection Program (WEPP) is a federal program which came into effect on July 7, 2008. It improves protection for workers whose employers become bankrupt or subject to a receivership.

A trustee or receiver is appointed, who will identify the employees who are owed wages, determine the amounts owed, and provide the employees and Service Canada with the information the employee needs to file a claim with the WEPP.

The employee must file a claim with the WEPP within 56 days of the bankruptcy or receivership. The amounts paid by the program are based on unpaid wages and vacation pay earned in the six months prior to the employer's bankruptcy or receivership.

Under the WEPP, the employee will receive wages and vacation pay that are owed, up to an amount equalling four weeks' maximum insurable earnings under the *Employment Insurance (EI) Act*.

The employee must also file a proof of claim with the trustee. This is required to process the WEPP claim, and for the employee to make a claim for possible amounts owing in excess of the WEPP amount.

Some employees may not be eligible to file a claim with the WEPP.

For further information, contact Service Canada at 1-866-683-6516 or go to www.servicecanada.gc.ca.

Insolvency

An employer is insolvent if it does not have enough assets to cover its debts, or if it is unable to pay its debts as they become due.

An insolvent employer may have ceased operating for reasons such as being unable to get further credit, having its utilities cut off, or being locked out of its business premises by the landlord for not paying rent.

An employer may be insolvent without being in receivership or bankruptcy.

Receivership

An employer may have a receiver appointed under the terms of a loan agreement with a creditor or by court order. Receiverships are covered under both the federal *Bankruptcy and Insolvency Act* and under BC's *Business Corporations Act*. If there is a conflict, the federal legislation will prevail.

Bankruptcy

A company becomes bankrupt when:

- It assigns itself into bankruptcy under the federal *Bankruptcy and Insolvency Act*, or
- Its creditors obtain a court order.

If a company files a notice of intention to make a proposal to its creditors to prevent a bankruptcy, it is protected from its creditors and the Employment Standards Act does not apply.

Office of the Superintendent of Bankruptcy

Receiverships and bankruptcies must be registered with the *Superintendent of Bankruptcy*. A receiver or a trustee will be appointed.

Employees may contact the Office of the Superintendent of Bankruptcy for more information at:

Suite 1900 - 300 West Georgia Street
Vancouver, British Columbia V6B 6E1
Telephone: (604) 666-5007
Fax: (604) 666-4610
Website: osb-bsf.gc.ca

Filing a complaint

An employee may file a complaint if:

- The employer is **not** bankrupt or in receivership;
- The employee is unsure of the employer's status; or
- The employer may be continuing business under another name.

If an employer is in receivership, an employee may file a complaint with the Employment Standards Branch if:

- He or she is not eligible to file a claim with the WEPP; or
- The amount of wages owing is more than the maximum payable under the WEPP.

The employee should make a list of all wages owing and gather any pay statements and other records that show hours worked and what wages are owed.

In these circumstances an employee does not have to use the Employment Standards Self-Help kit. The employee must indicate that the employer has ceased doing business and may be insolvent.

After receiving a complaint, the Employment Standards Branch will do a search to find out if a receivership or bankruptcy has been registered.

If the company is in receivership, and the employee is owed more than can be recovered under the WEPP, the Employment Standards Branch will determine if it can proceed, which will depend on the terms of appointment of the receiver.

If the company is not in receivership or bankruptcy, the Branch will investigate the complaint. If wages are owed, and the matter cannot be resolved voluntarily, the Branch will issue a determination and commence collection proceedings.

Record of Employment and T-4 Slip

Employees who do not receive a Record of Employment should contact Human Resources and Social Development Canada / Service Canada. Employees who do not receive a T-4 slip should contact Canada Revenue Agency.

