



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VI

#### REDUNDANCY PAYMENTS

##### *Redundancy Fund*

#### **106 Payments out of fund to employees**

- (1) Where an employee claims that his employer is liable to pay to him an employer's payment, and either—
- (a) that the employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and that the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
  - (b) that the employer is insolvent and that the whole or part of the payment remains unpaid,
- the employee may apply to the Secretary of State for a payment under this section.
- (2) If on an application under this section the Secretary of State is satisfied—
- (a) that the employee is entitled to the employer's payment;
  - (b) that either of the conditions specified in subsection (1) is fulfilled; and
  - (c) that, in a case where the employer's payment is such a payment as is mentioned in paragraph (b) or paragraph (c) of section 104(1), the employee's right to the payment arises by virtue of a period of employment (computed in accordance with the provisions of the agreement in question) which is not less than one hundred and four weeks,

the Secretary of State shall pay to the employee out of the fund a sum calculated in accordance with Schedule 7, reduced by so much (if any) of the employer's payment as has been paid.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Where the Secretary of State pays a sum to an employee in respect of an employer's payment—
- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Secretary of State has paid only part of it) all his rights and remedies with respect to that part of the employer's payment, shall be transferred to and vest in the Secretary of State; and
  - (b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee shall have effect as if it required that payment, or, as the case may be, that part of it which the Secretary of State has paid, to be paid to the Secretary of State;
- and any moneys recovered by the Secretary of State by virtue of this subsection shall be paid into the fund.
- (4) Where the Secretary of State pays a sum under this section in respect of an employer's payment, then (subject to the following provisions of this subsection) section 104 shall apply as if that sum had been paid by the employer to the employee on account of that payment; but if, in a case falling within paragraph (a) of subsection (1), it appears to the Secretary of State that the refusal or failure of the employer to pay the employer's payment, or part of it, as the case may be, was without reasonable excuse, the Secretary of State may, subject to section 108, withhold any redundancy rebate to which the employer would otherwise be entitled in respect of the employer's payment, or may reduce the amount of any such rebate to such extent as the Secretary of State considers appropriate.
- (5) For the purposes of this section an employer shall be taken to be insolvent if—
- (a) he has become bankrupt or has made a composition or arrangement with his creditors or a receiving order is made against him;
  - (b) he has died and an order has been made under section 130 of the Bankruptcy Act 1914 for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with the rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925; or
  - (c) where the employer is a company, a winding-up order has been made with respect to it or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.
- (6) In the application of this section to Scotland, for paragraphs (a), (b) and (c) of subsection (5) there shall be substituted the following paragraphs: —
- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or entered into a composition contract;
  - (b) he has died and a judicial factor appointed under section 163 of the Bankruptcy (Scotland) Act 1913 is required by the provisions of that section to divide his insolvent estate among his creditors ; or
  - (c) where the employer is a company, a winding-up order has been made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed.

- (7) In this section " legal proceedings " does not include any proceedings before an industrial tribunal, but includes any proceedings to enforce a decision or award of an industrial tribunal.