



Insolvency: Employee Debts and the National Insurance Fund

By **Ben Smith** - 30 July 2020

Money makes the world go round...

One of the main questions HR practitioners may face from employees when the business faces the possibility of insolvency is 'what happens to our pay?'

One of the key sources of assistance for employees of insolvent businesses is the National Insurance Fund (the "NIF"). The NIF is a government-backed fund that pays for social security benefits as well as guaranteeing certain payments due to employees where the employer is insolvent and unable to pay. Employees will also have claims directly against the insolvent employer for sums owed to them, though these often rank low in the priority of debts. As a result, employees often have slim prospects of recovery directly against the insolvent employer, making the NIF a crucial alternative.

If an insolvent business is purchased, HR teams at the purchaser will also need to be aware of the NIF in order to support any incoming employees with their claims to the NIF. You can read our top tips for HR in an insolvent business purchase [here](#).

HR practitioners can read our overview of the key things they need to know about insolvency [here](#).

What can be recovered from the NIF?

The table below sets out the main types of employee debt that can be recovered from the NIF. The NIF is available regardless of the type of insolvency the business is going through.



Type of employee debt	What is covered?	How much can be claimed?
Unpaid salary and benefits	<ul style="list-style-type: none"> • Salary • Contractual commission or bonus payments • Overtime • Contractual sick pay • Contractual maternity pay • Protective awards for failing to collectively consult (where this has been awarded by an Employment Tribunal). 	8 weeks' pay, currently capped at £538 per week (maximum £4,304).
Accrued holiday pay	Accrued holiday from any period prior to the start of insolvency proceedings.	Capped at 6 weeks' pay, and currently capped at £538 per week (maximum £3,228).
Pay in lieu of notice	Limited to statutory notice only.	Currently capped at £538 per week, maximum £6,456.
Statutory redundancy payment	The full statutory redundancy payment calculated in the usual way.	Current maximum, £16,140.
Unfair dismissal basic award	Claimable from the NIF only if the award has been confirmed by an Employment Tribunal.	Current maximum, £16,140.
Unpaid statutory sick pay	All unpaid SSP from the date of insolvency.	
Unpaid "parental" payments - SMP/SPP/SAP/ShPP	Pay can be claimed from the week in which the employer first became insolvent until the end of the ShPP/SPP/SAP/SMP period.	



If you or your organisation wish to seek advice regarding insolvencies, please get in touch with your usual GQ|Littler contact or email info@gqlittler.com.