



INSOL International™

EMPLOYEE ENTITLEMENTS II



Employee Entitlements II – Contributors List

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1. How is an employee defined for the purpose of formal insolvency proceedings?

Section 6 of the Czech Labour Code¹ defines an employee as “a natural person who is contracted to perform dependent work”. This means that an employee is a person who performs the employer’s tasks personally, in accordance with the employer’s instructions, in the name of the employer and as a subordinate to the employer. According to this regulation, an employee is a person in an employment relationship.

The Czech Act on the Protection of Employees against the Employer’s Insolvency² (the Employees Protection Act) states³ slightly differently that, for the purposes of this Act, an employee is an individual with whom the employer has concluded a labour relationship, an agreement on labour activity or an agreement to perform a job (these are different types of employment relationships) and who has unsettled wage-related claims that arose within the “decisive period”. The decisive period is defined as the month in which a moratorium before insolvency proceeding has been declared or in which a petition for insolvency of the employer was filed, as well as three months before and three months after that month.

2. What are employee entitlements, and to what extent (if any) are they given priority treatment during the formal insolvency proceeding?

According to the Employees Protection Act,⁴ where an employer has become insolvent, an employee is, within the scope of and upon conditions stipulated by the Act, entitled to payment of due wage claims not paid by his employer.⁵ In the case of international employers with employees working in the territory of the Czech Republic, such payment is to be performed by the regional labour office (or, in the case of international employers with employees working in the territory of the Czech Republic, the Prague labour office).

The Employees Protection Act also stipulates that a maximum of three months wages may be claimed. Claims for additional wages may be asserted only after certain conditions have been satisfied and there has been at least partial satisfaction of the previous claims.

The total wage claims paid to one employee may not exceed one-and-a-half times the “decisive sum” for one month’s wages. The “decisive sum” is determined by a decree of the Ministry of Labour and Social Affairs, and is based on the national average wage in the preceding calendar year. In 2017, this amount was about CZK 45,000 (EUR 1,700) per month (this amount is expected to increase to CZK 52,000 in 2019).⁶

Within seven working days of receiving an application from an employee, the labour office⁷ requests the employer to present the file of all employee wages, including wages for which mandatory social insurance contributions have not been paid. The employee is to be paid no later than ten days after the application.

¹ Labour Code, Act. No. 262/2006 Coll.

² Act of the Czech Republic No. 118/2000 Coll. on Protection of Employees against the Employer’s Insolvency as amended.

³ *Idem*, § 3.

⁴ *Idem*, § 1.

⁵ Labour Code, § 5, para 1 and § 8.

⁶ Employees Protection Act, § 5 para. 2.

⁷ *Idem*, § 9, para 6.



The Czech Bankruptcy Act⁸ sets out the priority of claims.

The employees' claims⁹ arising from the employment relationship have the same right to priority payment as claims arising from the administration of the debtor's estate, which means they can be fully paid at any time during the insolvency proceeding. The relevant claims are:

- wage (salary) claims of employees, including remuneration for work performed outside an employment relationship and remuneration for on-call duty;
- claims for leave and public holidays;
- severance payments for termination of employment;
- claims for compensation for damage incurred by the employee in the performance of working tasks or in direct connection therewith;
- claims for compensation for damage incurred by the employee while averting danger;
- claims for compensation for damage to things brought to work by employee;
- claims for compensation for invalid termination of the employment by the employer;
- compensation for travel, moving or other expenses;
- compensation of employees for their tools, equipment and items necessary for work;
- compensation for damage and non-material damage due to accidents at work and occupational diseases;
- compensation for loss of earnings arising from full or partial disability (unless compensated otherwise) and claims for compensation and the maintenance of survivors in connection with a work injury, incapacity or death.

The above mentioned claims are considered work claims regardless of when they arose.

3. How does the priority (if any) given employee entitlements in formal insolvency proceedings compare to the priority (if any) given to secured creditors, insolvency administrators, professionals retained by the estate, unsecured creditors, insolvency administrators, professionals retained by the estate, unsecured creditors and shareholders?

The claims of insolvency administrators and professionals retained by the estate¹⁰ and claims the rank equally with claims against the estate (such as work claims), may be satisfied at any time during the bankruptcy proceedings.¹¹ They therefore have a much higher probability of settlement than other unsecured creditors' claims. These claims may be satisfied only after the adjudication of bankruptcy. They are to be submitted to the person with the power of disposition, while other claims must be submitted to the insolvency court.¹²

⁸ Act of the Czech Republic No. 182/2006 Coll. on Bankruptcy and Means of Resolving It (hereafter referred to as the Bankruptcy Act).

⁹ *Idem*, § 169, para 1.

¹⁰ *Idem*, § 168, para 3.

¹¹ *Idem*, § 169, para 2.

¹² *Idem*, § 203, para 1.



4. What if any personal liabilities do directors and / or others involved in the management of the company have with respect to unpaid employee entitlements or taxes or other duties owned in relation to employee entitlements?

The directors and managers of a company are liable if they fail to act with due professional diligence and, as a result, cause damage to the company.¹³ Failure to pay employee entitlements is an administrative infraction which can result in fines for the company in an amount of up to CZK 2,000,000.¹⁴ This fine could be classified as damage caused to the company by a failure to act with due professional diligence, such that the directors and managers would be liable to compensate the company for that damage. Employees and other creditors could also have civil damage claims in the case of a delay in filing for insolvency.

Failing to pay social security contributions, taxes, health insurance contributions and similar payments is a criminal act.¹⁵ Compared to other jurisdictions, prosecution of such criminal acts is very slow. In many cases, the outcome is an agreement with the authorities for the payment of outstanding payments without additional sanctions.

5. Is there any form of statutory, industry or government funded “safety net” that serves to guarantee the payment of employee entitlements in an insolvency context? If so:

(a) how does such a scheme operate?

(b) what (if any) priority does it enjoy in formal insolvency proceedings in terms of payments it may make?

(c) what (if any) action does the scheme take to enhance recoveries that may be made in an insolvency to payout employee creditors and other unsecured creditors?

There is no additional special “safety net” scheme that guarantees employee entitlements in the event of insolvency. However, employees¹⁶ may ask a labour office to satisfy unpaid wage claims within 35 months and 15 days after the labour office has published information about the possibility of satisfaction of such claims.¹⁷

The Labour Office will pay all mandatory social insurance contributions and deductions from employees’ salaries that should have been made by the employer. The Labour Office can then attempt to recover such pay-outs by lodging a claim with the trustee. Labour Offices are quite often represented on the creditor committee and other bodies.

¹³ Act No 90/2012 Coll. on Commercial Companies and Cooperatives (Business Corporations Act), § 53.

¹⁴ Act No 251/2005 Coll. on Labour Inspection, § 26 para 1, para 2.

¹⁵ Act No 40/2009 Coll., Criminal Code, §§ 240 and 241.

¹⁶ Employees Protection Act, § 4, para 1.

¹⁷ *Ibid.*

¹⁸ Bankruptcy Act, § 291, para 1.



6. In the event of a sale by an insolvent company, whether in or out of a formal proceeding, of all of its assets as an ongoing business, would the acquirer be liable for employee claims on the basis of successor liability otherwise?

As general rule in civil law, where a debtor's enterprise is transferred by a single agreement, all rights and obligations of the enterprise pass to the acquirer. This includes rights and obligations owed to employees of the debtor company.¹⁸ However, in the case of bankruptcy, claims arising against the debtor before the agreement has come into effect are not transferred and must be satisfied out of the distribution of proceeds of the sale of the estate.

7. Are there any proposals for legislative reform to further protect employee entitlements in an insolvency?

No proposals from the current or the next government are expected. The number of insolvencies has decreased considerably during the present boom in the Czech economy and, until the next crisis comes, employee entitlements in case of bankruptcy of the employer are not a central topic of Czech politics.