

TRONDHEIM QUESTIONNARY

NORWAY

1. Are there any specific regulations on insolvency proceedings?

Yes, insolvency proceedings are governed by the Bankruptcy Act of 8 June 1984.

2. Which institutions (government agencies, courts, etc.) are in charge of insolvency proceedings generally and which institutions are in charge of the resolution of conflicts related to employment Law.

Ordinary courts act as bankruptcy courts, and are in charge of insolvency proceedings as well as resolution of conflicts related to employment law.

After the bankruptcy court has received the petition to institute bankruptcy proceedings, the court immediately summons a meeting. The debtor and the creditor, who has petitioned the bankruptcy, attend this meeting. If the bankruptcy court finds that the debtor is insolvent, and that the other conditions of bankruptcy are fulfilled, a decree will be passed to institute bankruptcy proceedings. This decree can be appealed to a court of appeal.

The bankruptcy court normally appoints an executive trustee, to administer and represent the bankruptcy estate. He is assigned to carry out the tasks that occur during the bankruptcy. As a rule, the executive trustee is an attorney at law. His main task is to carry out the bankruptcy in a generally accepted manner, and shall inter alia investigate whether the estate can file compensation claims against anyone in order to obtain assets for the creditors.

If the estate includes large assets or requires difficult evaluations, a creditors committee may be appointed. Appointments are made either by the bankruptcy court or by a general meeting of creditors. The creditors committee consists of 1-3 representatives from the creditors. Together with the executive trustee, they represent the board of trustees. The employees may also be represented on the board of trustees. The main task of the board is to ensure that the executive trustee carries out his function in a generally accepted manner.

During the bankruptcy proceedings, all creditors are summoned to pass decisions in a general meeting of creditors, which is the highest body of authority in a bankruptcy. The general meeting of creditors is presided by a judge from the bankruptcy court.

3. When a declaration of opening of an insolvency proceeding is issued, are the employment contracts considered automatically terminated or are they still in force?

Employment contracts remain in force even after a decree of insolvency is passed.

4. When an employment termination automatically occurs due to the opening of the insolvency proceedings, what benefit or severance could the workers be entitled to as a consequence?

Not applicable, cf. answer to question no. 3.

5. Is there any chance to terminate the employment contract of one or more employees once the opening of the insolvency proceedings already occurred? What reason is considered fair in order to allow the administrator of the insolvency proceedings to terminate the employment contracts? Is the employee entitled to any benefit or severance?

In case of bankruptcy, the business of the company may cease immediately, it may be continued for a period and then wound up, or it may be transferred and continue under a new owner.

Unless it gives a declaration to the contrary within three weeks, the estate will automatically take over the contract of employment, the employment will continue and the bankruptcy estate will be the employer. Even so, the employee may terminate the agreement at one month's notice. The estate may withdraw from the agreement at one month's notice. The bankruptcy estate decides whether or not the employees' contract of employment will continue. An employee may require the estate to decide within three weeks whether or not it intends to continue the contract of employment.

If the estate decides against continuing existing contracts of employment, the executive trustee must notify the employees to this effect within three weeks of the commencement of bankruptcy proceedings. This notification must be given in writing and may be given to all employees together. In addition, the executive trustee must send all employees a standard letter of notice as provided for in the Working Environment Act.¹

Even if the estate decides against continuing the contract of employment, it may enter into a new contract of employment with the employee, which often will be temporary; the estate may conclude a new contract of employment to perform clearing up duties after the end of the clearing and tidying period, selling off stocks, assistance in updating accounts etc.

If the estate intends to conduct limited business operations as part of the winding up process, it may normally decide which employees it needs and intends to use, provided that this choice is objectively made on the basis of the requirements of the estate.

6. What privileges or preferences, if any, are granted to employment credits?

The priority of claims in bankruptcy proceedings is determined in the Creditors Recovery Act.²

¹ Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc.

² Act of 8 June 1984 no. 59, Relation to Creditors right to satisfaction of claims

According to the Creditors Recovery Act, section 9-3, claims for wages or other remuneration for work in the debtor's service, must be covered prior to other claims against the employer; such a claim is a "preferred claim of first degree".

Holiday pay earned during the last 24 months before the filing date is also a preferred claim. As a general rule, the filing date is the day on which the bankruptcy petition reaches the bankruptcy court.

The claim for wages must not be too old, i.e. the pay day must not be further back in time than four months prior to the filing date. The preferred position of pay claims is limited to a total of six months' pay.

The general managers claim for wages and holiday pay will not be preferred, nor for the owner of the business. One is usually regarded as the owner if the ownership stake of at least 20% alone.

Pay for work done for the estate after the commencement of bankruptcy proceedings is a preferential claim. Other preferential claims are the trustee's fees and claims incurred during the bankruptcy proceedings. Preferential claims are against the estate, not against the company undergoing bankruptcy proceedings. Preferential claims are paid in full before any of the assets of the estate are applied in the payment of other claims.

7. Is there a guarantee institution that takes charge of the debts unpaid by the insolvent employer and to what extent?

If the company is unable to pay, the State will normally cover the claim through the Wage Guarantee Scheme.³

As a general rule, the Wage Guarantee Scheme will cover all preferred claims for wages or other remuneration for work in the debtor's service, as outlined under question no. 6 above. There are some exceptions, however:

Firstly, the Wage Guarantee Fund will not cover claims in excess of two times the basic National Insurance amount (2 G)⁴. The basic National Insurance amount is adjusted annually.

Secondly, the Wage Guarantee Scheme will not cover claims that have been transferred before the bankruptcy proceedings opened. One cannot claim for pay or holiday pay that has been transferred from a third party. The exceptions to this rule are transfers that are obviously not an abuse of the Wage Guarantee Scheme and claims transferred to a government agency.

³ A law has been adopted on this subject - the Act concerning State guarantees for wage claims in the case of bankruptcies etc. of 14 December 1973 No. 61 (the Wage Guarantee Scheme Act). The Ministry of Labour and Social Inclusion has adopted regulations to the Act, administered by the Directorate of Labour Inspection.

⁴ Equivalent to approx. 132 000 NOK, 16 500 EUR or 23 000 USD.

Thirdly, claims for salaries or holiday pay - in case the business has been transferred previous to the decree passed to institute bankruptcy proceedings – will only be covered till the date of transfer.

8. Is the guarantee institution subrogated in the rights and/or privileges granted to the worker, and may claim for them during the insolvency proceedings?

The Wage Guarantee Fund takes the rank in order of the priority of payments covered by the Wage Guarantee Scheme.

9. What's other effect has the insolvency proceeding on the employment relationship?

Bankruptcy proceedings may take some time, and the employees should not expect their pay on the usual pay day. This applies irrespective of whether the claim is paid by the estate or by the Wage Guarantee Fund.

Until the employee secure other income-generating work or receive payment from the bankruptcy estate or the Wage Guarantee Fund, he or she must take advantage of the ordinary benefit and social security schemes, and, if necessary, apply for social security in accordance with the Social Services Act.

10. When the whole or part of the enterprise is transferred during an insolvency proceeding, is there any particularity regarding the employees' rights?

The bankruptcy estate may sell the business to a new owner after the commencement of bankruptcy proceedings. If so, the employee has a preferential right to be employed by the new owners of the business.

If the company has been sold to a new owner previous to the bankruptcy proceedings, the employee will be protected against unfair dismissal according to the Working Environment Act. The employee is entitled to continue in the job with the new owner of the business.

11. Are there specific regulations protecting employees if an enterprise is shut down or if there are mass dismissals? Describe them.

In general, before making a decision regarding dismissal, the employer shall, to the extent that is practically possible, discuss the matter with the employee and the employee's elected representatives, unless the employee himself do not desire this.

According to the Working Environment Act, section 15-2, "collective redundancies" mean notice of dismissal given to at least 10 employees within a period of 30 days without being warranted by reasons related to the individual employees. Other forms of termination of contracts of employment that are not warranted by reasons related to the individual employee shall be included in the calculation, provided that at least five persons are made redundant.

An employer contemplating collective redundancies shall at the earliest opportunity enter into consultations with the employees' elected representatives with a view to reaching an agreement to avoid collective redundancies or to reduce the number of persons made redundant.

If redundancies cannot be avoided, efforts shall be made to mitigate their adverse effects. The consultations shall cover possible social welfare measures aimed, inter alia, at providing support for redeploying or retraining workers made redundant.

The employees' representatives shall have the right to receive expert assistance. The employer shall be obliged to enter into consultations even if the projected redundancies are caused by someone other than the employer who has superior authority over the employer, such as the management of a group of companies.

Employers shall be obliged to give the employees' elected representatives all relevant information, including written notification concerning:

- a) the grounds for any redundancies,
- b) the number of employees who may be made redundant,
- c) the categories of workers to which they belong,
- d) the number of employees normally employed,
- e) the groups of employees normally employed,
- f) the period during which such redundancies may be effected,
- g) criteria for selection of those who may be made redundant,
- h) criteria for calculation of extraordinary severance pay, if applicable.

Such notification shall be given at the earliest opportunity and, at the latest, at the same time as the employer calls a consultation meeting.

Corresponding notification shall also be given to the Labour and Welfare Service.