

Information regarding your employment due to bankruptcy

What does bankruptcy mean?

A debtor who is insolvent must through his own or the creditor's application be declared bankrupt. Insolvency (obestånd) means that the debtor is unable to pay his debts and that this incapacity is not merely temporary.

When a state of bankruptcy occurs a bankruptcy trustee is appointed, usually a lawyer. The tasks of the bankruptcy trustee includes dismantling the business as quickly as possible. If business activity is ongoing when the bankruptcy occurs, then this activity may be conducted under special conditions and during a certain period of time until the business eventually can be sold. An important task of the bankruptcy trustee is to raise as much money as possible for the bankruptcy estate in order to be able to distribute the money to those who have claims, e.g. the employees, the suppliers, the state, etc.

Termination of employment

When the employer is declared bankrupt, the bankruptcy trustee will lay off all staff due to lack of work. This applies regardless of what will happen to the business itself. The termination of employment occurs according to the Employment Protection Act of Sweden (LAS)

The notice period is as follows:

- 1 month if the total length of employment is less than 2 years
- 2 months if the total length of employment is between 2 – 4 years
- 3 months if the total length of employment is between 4 – 6 years
- 4 months if the total length of employment is between 6 – 8 years
- 5 months if the total length of employment is between 8 – 10 years
- 6 months if the total length of employment is more than 10 years

During the period of notice (uppsägningstid) employees are obliged to work as usual, if the bankruptcy trustee so requests. Anyone who will not work during the period of notice is obliged to be at the disposal of the labour market, and the easiest way to do this is to register as a jobseeker with the Swedish Public Employment Service (Arbetsförmedlingen)

Should the person find new employment elsewhere, he/she must deduct the salary from the new employment from his/her claim towards the termination salary. However, if the salary of the new employment is lower, the wage guarantee (lönegaranti) will compensate the salary deficit up to the previous salary level, during the period of notice.

The Wage Guarantee (Lönegaranti)

1. Salary or other compensations in connection to the employment, where payment has expired within the last three months before the bankruptcy application has been filed with the District Court, can be reimbursed through the state wage guarantee. Salary during the period of notice is compensated by the wage guarantee or by the bankruptcy estate if the bankruptcy trustee continues to run the business activity.
2. Holiday pay or compensation earned before the bankruptcy application that has not yet been payed for the current and preceding year of employment, can be reimbursed through the state wage guarantee. The same applies for holiday pay connected to the termination pay (uppsägningslön). Holiday days saved from previous years are covered by the wage guarantee for the five days saved from the year preceding to the previous year of employment.
3. Pension paid to the employee, or to the survivor of the employee, for a maximum period of six months prior to the filing for bankruptcy and the subsequent following six months is covered by the wage guarantee.

Note – the amount paid by the wage guarantee is limited to a maximum of 189200 SEK for 2020.

4. If the employee is covered by a pension insurance (pensionsförsäkring) and the employee premiums are payed by the employer, the wage guarantee will continue to pay the premiums until the period of notice has expired, the base amount of the premium will thus be included in the maximum amount mentioned in above.
5. County Administration Board (länsstyrelsen) will pay the salary and compensations covered by the wage guarantee. The County Administrative Board will arrange for the verification data (kontrolluppgift) for the time payments are made from their authority.

Claims that were not reimbursed through the wage guarantee (e.g. older saved holiday, termination pay (uppsägningslön) that could not be included within the

maximum amount) does nevertheless constitute bankruptcy claims. If there is money to be distributed, a so-called monitoring procedure (bevakningsförfarande) is carried out. If so would be the case, it is important to monitor the claim against the bankruptcy estate.

Certificates, verification data etc.

The employer is not released by bankruptcy from his or her obligations towards you and for circumstances that apply to time before the starting point of the bankruptcy. The employer is still obliged where appropriate and on request to issue:

- Employer's certificate for time before the bankruptcy
- Grades or certificates related to the employment
- Verification data (kontrolluppgift) for salary or other compensations that were paid before the starting-point of the bankruptcy

In such and similar matters, you should thereby contact your employer or your employer's representative and not the bankruptcy trustee.

It's important that you make the most of the time you have protecting your rights in these respects and act as soon as possible as contacting your employer in the future might prove to be a difficult task.

Please note that the wage guarantee can be paid for a maximum period of six months.

If you have any questions, please contact Nils Andersson or Marita Danielsson at the law firm Advokatfirman Sylwan & Fenger-Krog.

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