

The federal Bankruptcy and Insolvency Act sets out the rights and obligations of parties involved in bankruptcy or other insolvency proceedings.

## ***Bankruptcies and Employment Standards complaints***

Employment Standards has no jurisdiction to act on behalf of an employee when an employer is in bankruptcy.

Complaints are not accepted by Employment Standards once an employer is in bankruptcy. An employee should contact Industry Canada - Office of the Superintendent of Bankruptcy (OSB) to determine:

- whether a company has been placed into bankruptcy;
- the date of the bankruptcy; and
- the name of the appointed Trustee.

**Edmonton** ph. 780/495-2476, fax 780/495-2466

**Calgary** ph. 403/292-5607, fax 403/292-5188

To take action, employees must contact the Trustee to obtain, complete and return a 'Proof of Claim' form.

It is important that employees of the bankrupt act quickly to ensure the Trustee is aware of their claims, as there are time limits imposed on creditors for proving their claims for outstanding monies.

Although an employee may have a 'preferred status' under the Bankruptcy and Insolvency Act, this does not mean they will receive funds. In most instances, employees do not collect their earnings. This is because there are insufficient funds to cover even the secured creditors who have first priority.

An employer may enter bankruptcy during an Employment Standards complaint investigation. When this occurs and Employment Standards has received 'Proof of Claim' forms from the Trustee, Employment Standards will forward a form to every employee who has filed a complaint. If possible, Employment Standards will inform each complainant of the amount owed, and provide the employee with the name, address and telephone number of the Trustee.

Where the bankruptcy of an employer occurs after Employment Standards has completed an investigation and filed a judgement(s) against that employer, Employment Standards will forward copies of the outstanding judgements to the Trustee for consideration.

If no 'Proof of Claim' forms have been received from the Trustee, Employment Standards will notify each complainant that it has lost jurisdiction and provide information as to the amount owed to that complainant, if that amount has been determined.

Where a bankrupt employer hires new employees after the date of bankruptcy, Employment Standards will accept a complaint for investigation. This is because the liability for earnings arises after the bankruptcy. Therefore, the matter is outside the jurisdiction of the Trustee and the Trustee has no authority to consider the employee's claim.

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- Contact our Information Centre at: **427-3731**  
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: [www.gov.ab.ca/hre/employmentstandards](http://www.gov.ab.ca/hre/employmentstandards)

## ***Bankruptcy and Insolvency Act***

Under the federal Bankruptcy and Insolvency Act (BIA), a business may make a voluntary assignment into bankruptcy (to ensure the orderly distribution of funds), or it may be petitioned into bankruptcy as a result of a receiving order obtained by one or more of its creditors. All acts of bankruptcy are identified in section 42 of the BIA. In either case, the Official Receiver for the province involved (a government official responsible for administering the BIA) may appoint a Trustee. The Trustee becomes statutorily responsible for administering the affairs of the bankrupt estate. This usually involves preparing an inventory of existing assets, gathering and liquidating existing assets, and distributing assets to legitimate creditors in accordance with the scheme of distribution set out in the BIA.

In bankruptcy, the Trustee must follow the scheme of distribution set out in the BIA. Secured creditors receive absolute priority, and unless the Trustee receives permission from the Court to delay action by any secured creditor, secured creditors may take independent action in accordance with the terms of their own agreement with the bankrupt debtor (subsection 69.3(2) of the BIA). All other creditors are stayed from further legal proceedings from the date of bankruptcy (section 69.3(2) of the BIA).