



# Factsheet

This Factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and *Regulation* for purposes of interpretation and application of the law.

November 2002

## Bankruptcy

**Important: The Employment Standards Branch cannot recover wages on behalf of an employee if the company is bankrupt. The information in this Factsheet will help you find out what to do if your employer has ceased operating due to a bankruptcy or insolvency.**

Note: employees who are covered under a collective agreement must contact their union for assistance in recovering wages.

### What is insolvency?

A company is insolvent if it does not have enough assets to cover its debts, or is unable to pay its debts when they are due.

An insolvent employer may have ceased operating because he or she can no longer get credit, or because utilities are cut off or the landlord has locked the business out for not paying rent. Creditors can also ask a Court to declare a debtor insolvent.

### What is bankruptcy?

Bankruptcy happens when a business:

- Voluntarily applies for bankruptcy through the Official Receiver under the federal *Bankruptcy and Insolvency Act*, **or**
- Is forced into bankruptcy by creditors asking a court to declare the debtor bankrupt.

An employer may not be bankrupt simply because employees were not paid or because the company has closed its doors.

To find out if your employer really is bankrupt, ask your employer for the name of the *Bankruptcy Trustee*. The trustee is responsible for ensuring all creditors, including employees, receive information about the money owed to them.

If you cannot reach your employer, you can contact:

Office of the Superintendent of Bankruptcy  
Suite 1900 - 300 West Georgia Street  
Vancouver, British Columbia  
V6B 6E1  
Telephone: (604) 666-5007  
Fax: (604) 666-4610  
<http://osb-bsf.gc.ca>

If your employer is bankrupt you will need to file a claim with the bankruptcy trustee. There are time limits for filing so you should do this as soon as possible. More information is available from the Office of the Superintendent of Bankruptcy.

If your employer is not bankrupt, or you think the employer may be continuing business under another name:

1. Make a list of all money owed to you by the employer, including:
  - Regular wages (both the dollar amount and when you worked),
  - Annual vacation pay,
  - Compensation for length of service (severance pay), and
  - Any other monies owed to you by the employer.

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Ministry of Labour and  
Citizens' Services  
Employment Standards Branch

#### FOR MORE INFORMATION:

Call: 1 800 663-3316, 612-4100 in Prince George

Fax: 250 612-4121

Website: [www.labour.gov.bc.ca/esb](http://www.labour.gov.bc.ca/esb)

2. Keep all pay statements and other records that can prove you were an employee and that wages are owed to you; and,
3. File a complaint with the Employment Standards Branch.

**Note: If your employer has ceased doing business due to bankruptcy or insolvency you do not have to use the Employment Standards Self-Help kit. However, you must indicate at the time you file your complaint that the employer has “ceased doing business - bankrupt or insolvent;” otherwise the Employment Standards Branch will not accept your complaint.**

### What happens after I file a complaint?

After receiving your complaint, the Employment Standards Branch will do a search to find out if a bankruptcy has been registered.

If the company is not bankrupt, the Branch will demand that the employer provide payroll records. If the records show you are owed money, the Branch will issue a determination and try to collect money on your behalf.

If a search shows that the company is bankrupt, the Branch will search for any “associated companies” that are still operating.

Associated companies are companies that share common control, direction or purpose. For example, if the building you worked in is owned by your employer but is under a different company name and there are no other tenants, it would be considered an associated company.

If there are associated companies, the Branch can make a claim on your behalf with the bankruptcy trustee.

If the employer is bankrupt and there are no associated companies, the Branch will advise you that it will not accept your complaint and you must file a “proof of claim” with the bankruptcy trustee.

If the employer becomes bankrupt after the Branch has obtained payroll records, the Branch will calculate wages owing and file a “proof of claim” on behalf of all employees who have not been paid.

### How much of the money owed can be recovered if the employer is bankrupt?

In bankruptcy cases there is no guarantee that you will receive all or part of wages owed to you. The bankruptcy trustee will pay creditors according to the priorities set out in the *Bankruptcy and Insolvency Act*.

Creditors are prioritized as follows:

1. *Secured creditors* are creditors who have a secured or registered claim for all or part of a debt incurred for a specific purchase (for example, a bank holding a mortgage on property).
2. *Preferred creditors* are creditors who have received regular payment on bills or debts (wages earned in the 6 months prior to the bankruptcy to a maximum of \$2,000, utility companies).
3. *Non-secured creditors* are creditors who have extended credit to the company based on a promise to pay (suppliers, credit card companies, wages in excess of the amount above).

It is possible that, once secured creditors are paid, there may be little or no funds left to pay preferred and non-secured creditors.

In any case, it usually takes up to six months before you will see any money.

### Can I get Employment Insurance benefits or help finding another job?

Your local Human Resource Development Canada office will assist you in filing for Employment Insurance benefits or in a job search. You will find them listed in the blue pages of the telephone book.

### Will the Employment Standards Branch help me recover my Record of Employment or give me a T-4 for my income tax return?

No. If you have not received a Record of Employment from your employer, contact Human Resource Development Canada. Contact Canada Customs Revenue Agency if you do not receive a T-4 slip.