



Recommendations on the treatment of employee' wages and other debts arising in the employment relationship in the context of debt settlement arrangements under the Personal Insolvency Bill 2012

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INTRODUCTION

The Personal Insolvency Bill 2012 represents a radical overhaul and modernisation of Ireland's personal insolvency law.


The radical nature of the proposals, in particular their potential to impact on the wages and other entitlements of employees has not been fully recognised. One of the consequences of Ireland's ease of doing business regime is that individuals (natural persons) can be employers, meaning that individuals seeking personal insolvency under this legislation are likely to include individuals who are employers of a small and medium sized workforces. The situation that immediately comes to mind is where an individual employs a domestic worker in their own home, a GP employing a secretary. However these are unlikely to be the only categories of employees who have the potential to be affected by their employers' personal insolvency arrangement¹.

Congress is concerned that the legislation as it is currently drafted does not properly deal with the wages, rights and entitlements of employees. Of particular concern is the failure to protect statutory rights for example, the right to be paid minimum wage (or the rate established under a Registered Employment agreement or an Employment Regulation Order) from reduction by means of a personal insolvency arrangement.

Congress recommends that the legislation be amended to protect wages and other entitlements of employees (statutory and those in set out in collective agreements and contracts of employment) in circumstances where their employer is invoking personal insolvency under the Personal Insolvency Bill.

We set out below a series of recommendations, that if adopted would address the concerns of working people. In summary we are calling for amendments in three interlinked areas:

- 1. That wages and other debts arising from the employment relationship are excluded;**
- 2. That wages and other debts arising from the employment relationship are given preferential status and paid before the debt settlement arrangement;**
- 3. Where there are insufficient funds to pay wages and other debts arising from the employment relationship, employees are provided with access to the Insolvency Payment Fund and the Redundancy Fund in circumstances where their employer is 'personally insolvent' under this legislation; The Minister (for Social Protection) accordingly taking the place as creditor in place of the employee.**

¹ It would be of significant assistance if Revenue would provide an indication of the number of employers and employees potentially falling into this category. The information is readily available to them as individuals who are also employers register as such with Revenue on [Form TR1 \(PDF, 410KB\)](#)  (Annex 2 provides further information on the registration requirements).

Overview

In summary the Bill provides for the establishment of an 'Insolvency Service of Ireland' to play the key role in the delivery, monitoring and execution of the new personal insolvency arrangements. The Service is given significant powers enabling it to conclude three types of 'personal insolvency' agreements

- **Debt Relief Notices;** allowing for the write-off of unsecured debts up to €20,000 after a three-year period.
- **Debt Settlement Arrangements** for unsecured debts over €20,000. A debtor who owes over €20,000 in unsecured debt to one or more creditors will have the option of proposing a Debt Settlement Arrangement. If the arrangement is accepted by the creditors and adhered to over 5 years by the debtor, the balance of the debtor's debts covered by the arrangement will stand discharged. Here, the borrower pays the lender what they can after providing for "a reasonable standard of living". After a period of no more than five years, the outstanding debt is written off
- **Personal Insolvency Arrangements;** for secured debts up to €3m. A PIA is a process which allows a debtor to pay creditors a portion of what is due to them over a six or seven year period and then be discharged from further liability. The PIA also requires agreement between borrowers and lenders, with the borrower paying what they can for no more than six years.

IMPACT ON WORKERS' WAGES AND DEBTS ARISING FROM THE EMPLOYMENT RELATIONSHIP IN PERSONAL INSOLVENCY AGREEMENTS

The impact of insolvency on the employment relationship is a complex area of law touching on many aspects. The effect of insolvency on the employment relationship is not automatic and depends on the nature of the insolvency², the collective agreement covering the employee, and their contract of employment. The fact of the employers' insolvency does not destroy, waive or reduce the employees' rights and entitlements.

Congress is concerned that the proposed legal provisions concerning the operation of the debt settlement arrangements fail to recognise that wages and other debts arising in the context of the employment relationship might be involved (for a complete list of wages and debts arising in the context of the employment relationship see Annex 2).

The absence of protection for employees and rights is unacceptable and gives rise to multiple impacts including increasing noncompliance with employment law; unfair pressure on employees; and the creation of an environment of unfair competition between employers. It will also be problematic for the State as the majority of these rights have their origin in European Directives or EU Treaty obligations. If the personal debt settlement arrangements allow employees rights or employers obligations to be ignored or watered down, then it is foreseeable that the State will be in breach of its obligations under the various EU Directives and Treaty requirements.

² Where there is an examinership there is no impact on the employment status or relationship. Similarly there is no effect on the employment relationship where a receiver is appointed in the usual manner (i.e. under a debenture). However once a liquidator is appointed, depending on the circumstances an employee may be made redundant.

It is worth pointing out here that there are already extensive arrangements under which employers can renegotiate wages or claim 'inability to pay' in respect of statutory minimum wages including those established under Registered Employment Agreement and Joint Labour Committees. These arrangements are set in law, have been the subject of extensive discussion and agreement, and importantly include procedural safeguards to address the imbalance in the power relationship between employers and employees. It would be unacceptable if the personal insolvency legislation operated in such a way that employers could avoid the existing safeguards or get a 'second bite' at reducing their employees wages or other payments arising from the employment relationship.

EXCLUDE WAGES AND OTHER DEBTS ARISING IN THE EMPLOYMENT RELATIONSHIP

The Personal Insolvency Bill introduces the concept of "excluded" debts in an insolvency process. The Bill as drafted makes provision in regard to types of debts deemed to be "excluded debts" which either 1) cannot be reduced in any of the three new debt resolution processes or 2) can only be reduced subject to certain conditions. Congress is calling for the first option to apply to employees' wages and other debts arising in the context of the employment relationship so that the right to be paid in full is not reduced by means of the debt settlement processes.

AMEND THE PERSONAL INSOLVENCY BILL TO PROVIDE RECOMMENDATION #1

THE RIGHT OF EMPLOYEES' TO THEIR WAGES AND OTHER DEBTS ARISING IN THE EMPLOYMENT RELATIONSHIP CANNOT BE REDUCED AS PART OF THE DEBT RESOLUTION PROCESS.

Give preferential status for employees' wages and other debts arising from the employment relationship

When it comes to outstanding wages and other debts arising from the employment relationship, existing bankruptcy and company law give preferential creditor status to employees for certain debts. This means that specified employee debts are given priority (i.e. employees rank equal to the Revenue, the liquidator) and paid before others. Employees affected by the personal insolvency of their employer should have the same rights.

AMEND THE PERSONAL INSOLVENCY BILL TO PROVIDE RECOMMENDATION #2

THAT EMPLOYEES' WAGES AND OTHER DEBTS ARISING IN THE EMPLOYMENT RELATIONSHIP HAVE PREFERENTIAL CREDITOR STATUS AND ARE TREATED (AT LEAST) EQUAL TO REVENUE AND PAYABLE IN FULL I.E. BEFORE THE DEBTS IN THE DEBT SETTLEMENT ARRANGEMENT ARE CONSIDERED.

It is recognised that preferential creditor status only offers protection to the employee where there are adequate funds to discharge the debts due.

Access to the Insolvency Payment Fund and the Redundancy Fund for employees affected under this Bill

In the event that an employer is unable to meet payment there is a final 'safety net' available to employees in the form of the Insolvency Payment Fund. Employees who find themselves in the unfortunate situation where their employer has become insolvent and they are owed money arising out of the employer/employee relationship are protected under the Protection of Employees (Employers Insolvency) Act 1984 to 2006³. The Act implements the EU Directive (Directive 80/987 [1980] OJ L283/23) relating to the protection of employees in the event of insolvency of their employer. The Directive provides that member states must ensure that a fund is available from which employees can claim payment of debts arising from the employment relationship which have not been paid as a result of the employer's insolvency. (It also obliges member states to protect the interests of workers in relation to pension schemes in the event of an employer's insolvency).

The legislation provides that an employer is 'insolvent' where he or she falls within one of the following five categories:

1. The business is in liquidation
2. The business is in receivership
3. The employer is legally bankrupt
4. The employer has died and the estate is being administered under the relevant legislation
5. The employer is insolvent under the legislation of another EU Member State

Payments under Insolvency Payments Scheme include:

- Arrears of wages/salary, holiday pay, sick pay, pay in lieu of notice. This is subject to a cap of €600 per week, up to a maximum of 8 weeks arrears.
- Awards made under employment legislation (e.g. awards made by the Employment Appeals Tribunal in an Unfair Dismissal's action);
- Certain contributions to occupational health schemes and PRSA's.

Payments under Redundancy Payments Scheme:

This is a separate scheme under which employees are paid from the fund in circumstances where the employer is unable to pay the statutory redundancy entitlements of its employees.

Payments can be made under both schemes. Where an employee has received a payment from the Social Insurance Fund or the Redundancy scheme that employees rights (and remedies) in respect of that debt are transferred to the Minister. Accordingly the Minister becomes a preferential creditor in the priorities of creditors. Furthermore the debt due to the Minister shall be paid in priority.

³ The original 1984 Act under which the Scheme operates has been amended on a number of occasions by various other pieces of legislation and, with these amendments, is known collectively as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2006.

Recommendation # 3 The Personal Insolvency Bill should include the necessary provisions to ensure that where an employer is 'personally insolvent' and there are insufficient funds to meet the payments owed to employees, those employees must be recognised for the purpose of access to the Insolvency Payment Fund and the Redundancy Fund. The Minister (for Social Protection) accordingly taking the place as creditor in place of the employee.

SUMMARY OF KEY POINTS

- 1. The person claiming personal insolvency may be an employer and the rights of their employees cannot be ignored or swept away;**
- 2. There are existing mechanisms through which employers and employees can agree to reduce wages;**
- 3. Wages and other debts arising from the employment relationship should not be capable of being reduced as part of the personal insolvency arrangements;**
- 4. Wages and other debts arising from the employment relationship are recognised as having 'preferential status' and the same should apply in this legislation;**
- 5. Where there are insufficient funds to pay wages and other debts arising from the employment relationship, employees are provided with access to the Insolvency Payment Fund and the Redundancy Fund and the same should apply in circumstances where the employer is 'personally insolvent' under this legislation; The Minister (for Social Protection) accordingly taking the place as creditor in place of the employee.**

Ends

For further information please contact

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ANNEX 1

WAGES AND OTHER DEBTS ARISING IN THE CONTEXT OF THE EMPLOYMENT RELATIONSHIP

PAYMENTS MADE FROM THE SOCIAL INSURANCE FUND

Subject to some limits and conditions, the following entitlements are covered by the Scheme:-

- 1. Arrears of wages.*
- 2. Deductions such as union dues, health insurance, e.g., V.H.I, Aviva, life assurance, etc., made from wages by agreement but not paid to the relevant body.*
- 3. Arrears of sick pay due under an occupational sick pay scheme (limited to the difference between any disability or injury benefit in addition to any pay-related benefit payable under the Social Welfare Acts and normal weekly remuneration).*
- 4. Holiday pay.*
- 5. Pay in lieu of the statutory notice entitlement set out in the Minimum Notice and Terms of Employment Act 1973, or payment of an award by the Employment Appeals Tribunal under that Act.*
- 6. An amount which an employer is required to pay under an Employment Regulation Order within Part IV of the Industrial Relations Act 1946 where proceedings have been instituted.*
- 7. An amount which an employer is required to pay by order of the Labour Court under a Registered Employment Agreement within Part III of the Industrial Relations Act 1946, or in respect of which proceedings have been instituted.*
- 8. Certain arrears of pension or PRSA contributions not paid into the pension scheme or PRSA. An amount which an employer is required to pay under a determination, decision, order, award, recommendation or mediated settlement (as appropriate) under the following legislation:*
 - Unfair Dismissals Act 1977 or damages at common law for wrongful dismissal*
 - Employment Equality Acts 1998*
 - Maternity Protection Act 1994*
 - Adoptive Leave Act 1995*
 - Parental Leave Act 1998*
 - National Minimum Wage Act 2000*
 - Carer's Leave Act 2001*
 - Payment of Wages Act 1991*
 - Terms of Employment (Information) Act 1994*
 - Protection of Young Persons (Employment) Act 1996*
 - Organisation of Working Time Act 1997*
 - Protections for Persons Reporting Child Abuse Act 1998*
 - European Communities (Protection of Employment) Regulations 2000*
 - Protection of Employees (Part -Time Work) Act 2001*
 - Competition Act 2002*
 - Protection of Employees (Fixed -Term Work) Act 2003*
 - European Communities (Protection of Employees on Transfer of*

Undertakings) Regulations 2003

- *Industrial Relations (Miscellaneous Provisions) Act 2004 – award by a Rights Commissioner concerning victimisation*
- *Employment Permits Act 2006 – award by a Rights Commissioner concerning penalisation of an employee.*



Entitlements under the above legislation are covered only where the determination, decision, order, etc., was made no earlier than 18 months prior to the date of insolvency of the employer or after that date, and has not been appealed, or by which the appeal deadline has passed. The Scheme is extended from time to time to include new entitlements

For full details see **Department of Social Protection Guide to Insolvency**

<http://www.welfare.ie/EN/Schemes/RedundancyandInsolvency/insolvency/Pages/EmployeeGuide.aspx>

ANNEX 2 INDIVIDUALS AS EMPLOYERS

In individual must register as an employer with Revenue if they make payments to employees exceeding a rate of €8 per week or €36 per month. . An exemption to this applies in circumstances where the individual to whom the payments are made is a sole domestic worker in which case the amount is €40 a week. To register with Revenue and individual must complete:

 [Form TR1 \(PDF, 410KB\)](#) Individual/Sole Trader or a Partnership, It is worth highlighting that this is a separate for to  [Form TR2 \(PDF, 260KB\)](#) which is used when registering employees of a company

Part D of Form TR1 requires the following information to register.,

| <i>Part D</i> | <i>Registration as an Employer for PAYE/PRSI</i> | | | | | | | | |
|--|--|---|---|---|---|---|---|---|---|
| 40. If you are registering as an employer for PAYE/PRSI tick <input checked="" type="checkbox"/> box and complete this part | <input type="checkbox"/> | | | | | | | | |
| 41. Persons Engaged | | | | | | | | | |
| (a) How many employees are: Full time - usually working 30 hours or more per week? | <input type="checkbox"/> | | | | | | | | |
| Part time - usually working less than 30 hours per week? | <input type="checkbox"/> | | | | | | | | |
| (b) State the date your first employee commenced or will commence in your employment * | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px; text-align: center;">D</td> <td style="width: 20px; height: 20px; text-align: center;">D</td> <td style="width: 20px; height: 20px; text-align: center;">M</td> <td style="width: 20px; height: 20px; text-align: center;">M</td> <td style="width: 20px; height: 20px; text-align: center;">Y</td> <td style="width: 20px; height: 20px; text-align: center;">Y</td> <td style="width: 20px; height: 20px; text-align: center;">Y</td> <td style="width: 20px; height: 20px; text-align: center;">Y</td> </tr> </table> | D | D | M | M | Y | Y | Y | Y |
| D | D | M | M | Y | Y | Y | Y | | |
| 42. What payroll and PAYE/PRSI record system will you use? (tick <input checked="" type="checkbox"/> the relevant box) | | | | | | | | | |
| (a) Computer System <input type="checkbox"/> | If you are using a computerised payroll package you should register for the Revenue On-Line service (ROS) at www.revenue.ie to receive electronic copies of Tax Credit Certificates and to file your P35 End of Year Return on-line. | | | | | | | | |
| (b) Other Manual System <input type="checkbox"/> | Wages books are available from Office Suppliers/Stationery Bookstores | | | | | | | | |
| 43. Correspondence on PAYE/PRSI | | | | | | | | | |
| If correspondence relating to PAYE/PRSI is being dealt with by an agent, tick <input checked="" type="checkbox"/> this box <input type="checkbox"/> and give the following details if different from Panel 27. | | | | | | | | | |
| Name | <input style="width: 100%;" type="text"/> | | | | | | | | |
| Address | <input style="width: 100%;" type="text"/> | | | | | | | | |
| Tax Adviser Identification Number (TAIN) | <input style="width: 100%;" type="text"/> | | | | | | | | |
| Phone number | <input style="width: 100%;" type="text"/> | | | | | | | | |
| E-Mail | <input style="width: 100%;" type="text"/> | | | | | | | | |
| Mobile phone number | <input style="width: 100%;" type="text"/> | | | | | | | | |
| Client's Reference | <input style="width: 100%;" type="text"/> | | | | | | | | |
| <i>Part E</i> | <i>Registration for Relevant Contracts Tax (RCT)</i> | | | | | | | | |