

Employment Standards

Rights and responsibilities at work

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Receiverships

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Receiverships are covered under both the federal *Bankruptcy and Insolvency Act (BIA)* as well as Alberta's *Business Corporations Act*. Each piece of legislation sets out the rights and responsibilities of the parties involved.

Wage earner protection program

The federal Wage Earner Protection Program (WEPP) reimburses eligible workers for unpaid wages, vacation pay and termination pay they are owed when their employer declares bankruptcy or becomes subject to a receivership under the *BIA*. To be eligible, an employee must meet all of these criteria:

- your employment has ended;
- your former employer is declared bankrupt or is subject to a receivership; and
- you are owed eligible wages for the six month period ending on the date of the bankruptcy or receivership.

You may visit the Service Canada website at www.servicecanada.gc.ca/eng/sc/wepp/index.shtml or phone 1-866-683-6516 (toll-free) for additional information on WEPP.

For more information on bankruptcies, please see the "Bankruptcies" Fact Sheet at <http://employment.alberta.ca/esfactsheets>.

Role of employment standards in receiverships

A receivership has no effect on the jurisdiction of Employment Standards to accept and investigate complaints, but does affect the way in which complaints are resolved.

In a receivership, the investigating officer will:

- contact the receiver and provide details of all claims received to date (send copies of complaint forms);
- notify the receiver of their obligation to pay employees under the *Employment Standards Code's (Code)* deemed trust provisions;

- ask the receiver to advise how they propose to assess and pay the amounts owing to employees in question, and to notify Employment Standards of any payments made to these employees; and/or
- ask the receiver to contact the investigating officer if they require assistance in assessing the amounts owed to employees.

A receivership must be registered with the Office of the Superintendent of Bankruptcy (OSB). Contact the OSB to determine:

- whether a receiver has been appointed for a company;
- the date of appointment; and
- the name of the receiver.

Edmonton

Phone 1-877-376-9902 (toll free) / Fax 780-495-2466

Calgary

Phone 1-877-376-9902 (toll free) / Fax 403-292-5188

Priorities

In a receivership, the deemed trust provisions in section 109 of the *Code* provide employees with priority over secured creditors up to \$7,500.00 per employee for wages, overtime, vacation and general holiday pay owing. Note: termination pay is **not** included in this listing.

This priority over secured creditors under section 109 of the *Code* is subject to a Purchase Money Security Interest (PMSI) as defined in the *Personal Property Security Act*. A typical example of a PMSI is a loan provided to purchase a specific item where the loan funds are directly applied to the purchase of the asset, e.g., a bank loan applied directly to the purchase of a vehicle. It must be noted that there are special registration and timing requirements to create a PMSI.

Status of termination pay

An employee is entitled to termination pay even if their employment terminates because of a receivership. A claim for termination pay has no special priority under section 109 of the *Code* and will receive the same consideration in asset-division as any other unsecured creditor.

Responsibility for payment of earnings in a receivership

Employees involved in a receivership will be in one of the following situations:

- Employees whose employment terminates upon appointment of the receiver. In this case, the debtor business is responsible for employee earnings and the employee may be eligible to apply to the WEPP.

- Employees who continue to work after a receiver is appointed. In this case, all employee earnings after the receivership are the responsibility of the receiver. Any arrears in employee earnings prior to the receivership will be paid by the receiver out of the assets of the business, if any.
- Employees who are newly hired and work exclusively for the receiver. In this case, the receiver is responsible for employee earnings.

In a receivership, employee earnings often exceed the employer's business assets. Where the business assets are insufficient to cover employee earnings, Employment Standards will attempt to collect any shortfall under the deemed trust provisions in section 109 of the *Code*. Corporate directors may also be personally liable under the provisions of section 112 of the *Code*.

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