

RESTAURANT GOING BUST? HERE'S SOME FOOD FOR THOUGHT.....



Many readers will be aware of the recent, sudden closure during service of Mayfair restaurant "The Square", which left staff out of work and out of pocket after January's wages remained unpaid.

Sadly this is by no means an isolated example, as every year thousands of bars and restaurants 'go under', but there are steps you can take to protect your position as an employee.

KEEP INFORMED

Not all employers keep their staff updated on the financial health of the company, particularly when its struggling.

If in doubt you can search online at Companies House to check the legal status of the company (e.g. "In Administration" or "Liquidation"). If the company is listed as "Active" it remains actively trading and is not insolvent. In this case, you can review the company's filed accounts to check their profitability, or otherwise.

IF YOUR EMPLOYER IS NOT YET INSOLVENT

If your company remains actively trading but is not paying your salary, in whole or in part,

query the reason for this in writing and request the company remedy this in your next salary payment. If the situation continues then you can consider bringing a claim for unlawful deduction from wages in the employment tribunal (which is free), or alternatively serve a statutory demand on the company as you are a creditor that is owed money.

If the company does not respond to your statutory demand within 21 days, you have the right to apply to 'wind up' the company for payment of the debt. Just the threat of such a step will often result in a surprisingly quick payment in response!

IF YOUR EMPLOYER IS ALREADY INSOLVENT

If the company has already become insolvent, your options depend on the type of insolvency. Three of the more common routes are:

Administration: This is when the company will continue trading under the management of an administrator in an attempt to stay in business.

Company Voluntary Arrangement (CVA): This is an attempt to remain in business

by approaching creditors to formally agree payment of a proportion of the monies owing to them.

Liquidation: This is where the company is wound up, and all the assets are sold to pay back creditors as much as possible.

In each of these routes an 'Insolvency Practitioner' will be instructed to oversee the process. They are often accountants or insolvency specialists, who do not strictly work for the company, but have a responsibility to maximise the return of debts owed to company creditors.

The first step any employee should take is to register the amount of outstanding money owed to them with the insolvency practitioner who has been appointed. If any arrears of wages, holiday pay and pension contributions (up to £525 per week) are owed you will be registered as a preferential creditor. As such you will rank second on the priority list to receive monies owed to you, behind only secured creditors (often those with security in the form of a mortgage or charge over a property).

CVA OR ADMINISTRATION

If a company has entered a CVA or Administration it will continue trading and may ask that you continue working. In this case, it is up to you whether you agree to do so, but if you leave you will need to tender written contractual notice and will only be entitled to your notice pay (if you work it), and no further payments.

If the company is sold or transferred to allow it to continue trading your employment rights are generally protected and your employment will usually continue the same terms and conditions (and you will remain entitled to receive any unpaid historical wages).

Unfortunately, CVAs and Administrations are often unsuccessful and only delay the inevitable liquidation of the company. If you decide to continue working, you will remain entitled to a statutory redundancy payment on closure of the business.

LIQUIDATION

Whether it is following a CVA or Administration or immediately after

becoming insolvent, sometimes a business simply cannot continue to trade and will close entirely. If this is the case the Insolvency Practitioner will look to pay all creditors of the company in order of priority. Often there is insufficient money to do so and secured creditors (banks, commonly) will take the majority or all the remaining funds, leaving employees out of pocket.

If this is the case, you are entitled to recover the sums you are owed arising from your employment from the government's National Insurance Fund. You will also be entitled to a statutory redundancy payment.

The process is relatively straightforward:

1. Obtain a case reference number from the Insolvency Practitioner (this will start CN);
2. Enter this number and details of your employment on the claim portal at the gov.uk website;
3. Enter the elements you are claiming, which can include:

- A statutory redundancy payment (there are automated calculators on line);
- Unpaid Wages (up to 8 weeks at a maximum of £525 per week);
- Your statutory notice period. This will be using a further reference number and can only be applied for after the end of what would have been your statutory notice period (1 week per year of service, up to 12);
- Holiday pay for up to 6 weeks of accrued but untaken holiday days; and
- Unpaid employer pension contributions.

If there were more than 20 employees and the company did not undertake a proper redundancy consultation before insolvency, then you are entitled to bring an employment tribunal claim for a 'protective award' (of up to 8 weeks' pay) against the Secretary of State for Business, Energy and Industrial Strategy.

Hopefully these measures will provide a financial breathing space and time to find a new role. 🍴