



Advice from Alan

Employee entitlements in liquidation

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When a company cannot pay the money that it owes to its creditors, then

it must stop trading and go through a liquidation process. This is never an easy period for anyone involved, but it can be particularly stressful for employees who have an uncertain job future and may be owed money by their employer.

Once a company is placed into liquidation, a liquidator is appointed who will sell the company's assets to pay the creditors. If the business is closed by the liquidator, then the employment relationship will end. However, the liquidator is entitled to keep the business open and try to trade out or sell the business.

In most cases, employees are given preferential payment treatment during the liquidation process. This means that they will be given greater priority when the liquidator is distributing funds. However, not everything an employee might be owed by the company can be covered.

The employee will be entitled to claim

all wages earned in the last four months prior to the commencement of liquidation, as well as any holiday pay, redundancy pay, KiwiSaver payments, and any awards made by the Employment Relations Authority.

There is a cap of \$23,960 total for what an employee can receive as their preferential entitlement. Should the employee have a claim that is greater than this total sum, the excess will be treated as an unsecured claim in liquidation and with less priority.

Sometimes an employee may find out that a company in liquidation has failed to fulfil its PAYE obligations. If this is the case, the IRD will not hold the employee personally responsible for the taxes. The liquidator or IRD may hold the director(s) personally liable for these tax obligations. They can also be liable personally for unpaid wages.

If you are unsure about your entitlements in the event that your employer goes into liquidation, it is always a good idea to either contact the liquidator directly or seek legal advice so that you can be guided through the process.