

# EMPLOYEES

The CCMA has no jurisdiction to consider the validity of an order of insolvency or liquidation (provisional or final) issued by the High Court. The employee's recourse is to lodge a claim with the liquidators / trustees. Any claim brought by an employee to the CCMA would end upon the company or close corporation's final liquidation.

All employment contracts will be suspended from the date of the order being granted. Employees do not have to render their services during the suspension period and employees will be deemed to be unemployed. In this regard you will be entitled to claim Unemployment Insurance (UIF). The employer/liquidator is obligated to provide you with a duly completed UI19 form in order for you to claim your unemployment benefits indicating the reason of termination, as Insolvency/Liquidation. In terms of the Insolvency Act all employment contracts that were not already terminated by the liquidator upon the granting of the liquidation order, will terminate automatically after 45 days of the liquidator being appointed.

As an employee you become entitled to severance pay of 1 week for each year of completed service upon the liquidation of the employer company and you have a preferential claim in this regard.

Before you leave you should ensure that you complete and obtain all necessary documentation from the liquidator. This includes, as already indicated above a duly completed UI 19. Form, a certificate of service, proof of claim affidavit and the contact details of the liquidator

The Creditors of the liquidated estate of the employer company are divided into three categories:

- Secured creditors (creditors, who hold some sort of security, for example ABSA bank;
- Preferential creditors; and
- Concurrent creditors.

Employees fall within the preferential creditors' category. This means that after the secured creditors have been paid, you will receive a dividend from the profits of assets that were sold. In terms of section 98A of the Insolvency Act, certain portions of your salary, leave pay, severance will be preferential. Salary also enjoys preference over claims for leave and severance pay. This is set out below. This means that for example in the case of salary for a period of 3 months R12 000 of the claim will be preferential above other claims.

Summary of Section 98A of the Insolvency Act 24 of 1936:

This section applies to all companies and close corporations liquidated on/ after 1 September 2000. This section replaces section 100 of the Insolvency Act.

Description      Preference

- (i) Salary for a period of no longer than 3 months limited to R12 000.00
- (ii) Leave pay limited to R 4 000.00
- (iii) Any form of paid absence limited to R 4 000.00
- (iv) " Severance of retrenchment" owing to the employee limited to Calculation - 1 week salary for every completed year service R12 000.00

Any amounts that exceed the preferential amounts, becomes concurrent claims. In this regard you need to ensure that you complete a proof of concurrent claim affidavit and submit supporting documents, proving your claim to the liquidator. However, sometimes if a company is in severe dire straits it is better not to claim for these amounts, as you may run the risk of paying a contribution towards the liquidation costs if there is not enough money in the estate to cover the liquidation costs.