



VELFERÐARRÁÐUNEYTIÐ

Ministry of Welfare

**The Wage Guarantee Fund Act, No. 88/2003,
as amended by act No. 129/2004, No. 131/2005, No. 167/2006, No. 88/2008,
No. 131/2008, No. 70/2009, No. 97/2009, No. 120/2009, No. 162/2010,
No. 126/2011, No. 164/2011, No. 26/2013, No. 139/2013 and No. 107/2014.**

SECTION I

Aim and Scope.

Article 1

Aim.

The aim of this Act is to guarantee payments to employees and pension funds in respect of their outstanding claims in the event of an employer's insolvency employer's estate at death is settled by an official and his/her heirs do not accept liability for his/her obligations.

Article 2

The Wage Guarantee Fund.

A Wage Guarantee Fund shall be operated; it shall guarantee the payment of claims for outstanding wages, compensation for the termination of employment contracts, vacation pay, compensation for accidents at work and pension premiums made against the estate of an employer who is established in Iceland and runs a business in Iceland. [In cases where the employer is established in one of the Member States of the Agreement on the European Economic Area, or in Switzerland or the Faroe Islands, and also maintains permanent activities in Iceland, this Act furnishes liability for claims relating to those workers who discharge their employment obligations entirely, or normally, in Iceland. When determining liability under sentence 2, consideration shall be given to whether decisions have previously been taken regarding the same workers' claims in any of the states listed above.]¹⁾

The Fund's liability shall be dependent on the condition that the claims under paragraph 1 shall have been recognised as priority claims under Article 112 of the Liquidation (etc.) Act, No. 21/1991, without prejudice to the restrictions and exceptions provided for in Sections II–IV of this Act.

If the employer's estate is administered under the laws of another state, the provisions of this Act shall apply, as appropriate, to the handling of claims that qualify for liability under paragraph 1.

¹⁾ Act No. 26/2013, Article 1.

Article 3

Administration.

[The Minister]¹⁾ shall be in charge of the application of this Act.

The Wage Guarantee Fund shall be under a three-man management board, to be appointed by the Minister for terms of four years at a time in accordance with nominations by the Icelandic Confederation of Labour and the Confederation of Icelandic Employers, and one member, who shall be the chairman of the board, being appointed without nomination. Alternates shall be appointed in the same way.

Further provisions on the role of the management board of the Wage Guarantee Fund and financing of the Fund are to be found in Section VIII.

¹⁾ Act No. 126/2011, Article 376.

SECTION II Liability Period and Claims.

Article 4

Liability period.

The Fund's liability shall apply to the claims that are listed in Article 5 and become payable during the 18 months immediately preceding the date of a ruling, or to which entitlement is earned during that period. The liability period may, however, be based on a deadline date if this is more favourable for the claimant.

In special exceptional cases, the Fund may guarantee claims that become payable outside the liability period under paragraph 1, providing that normal measures have been taken to collect them. However, the application of this provision shall not result in the liability period becoming longer than 18 months.

Article 5

Claims guaranteed by the Fund.

The following claims against an employer's estate shall be guaranteed by the Fund:

- a. Claims by employees for wages for their last three months of employment in the service of the employer.
- b. Claims for compensation for loss of wages for up to three months due to the termination of an employment contract, [providing that the claimant has not been employed by another employer or started his/her own business during that period. If the wages in the new job is lower than in the former job, he/she shall be paid compensation for loss of wages according to paragraph 1 that amount to the wage difference, but, however, never more than amount to the difference between the lower wages and the maximum liability under paragraph 1 of Article 6.]¹⁾
- c. Claims for holiday pay to which entitlement has been earned during the liability period as defined in Article 4.
- d. Pension funds' claims for pension premiums that have fallen due during the liability period, *cf.* Article 4. Liability shall be restricted to the [12%]²⁾ minimum premium and up to 4% of the premium reference base according to an agreement on additional insurance cover, *cf.* Articles 2 and 9 of the Pension Rights (Obligatory Insurance) and Pension Funds Operations Act, No. 129/1997, and the provisions of collective agreements. The Minister shall issue regulations setting out further provisions on the liability of the Fund for pension premiums, including provisions on the monitoring of premium payments and the collection of premiums.
- e. Employees' compensation claims in connection with injuries caused by accidents at work and compensation claims by the relevant party following the death of an employee, providing that these are not covered by the employer's insurance.

¹⁾ Act No. 107/2014, Article 1. ²⁾ Act No. 167/2006, Article 14.

Article 6

Maximum liability.

The maximum liability accepted in respect of employees' wage claims under items *a* and *b* of Article 5 shall be ISK 250,000 for each month. The maximum liability accepted in respect of claims under item *c* of Article 5 shall be ISK 400,000. These figures shall be revised each year in regulations¹⁾ issued by the Minister following receipt of recommendations from the board of the Wage Guarantee Fund.

Part payments of claims under Article 5 made by an employer before the delivery of a liquidation ruling shall be deducted from the Fund's total liability or the sum falling under guarantee, if it is lower. In the same way, unemployment benefit payments and employment earnings during the notice period shall be deducted from claims under item *b* of Article 5. The Fund shall pay the employee the amount remaining following these deductions.

When the Fund settles claims under items *a* and *b* of Article 5, each month shall be settled separately in accordance with the maximum liability sum specified in paragraph 1. If the employee's claim covers a period shorter than one month, the maximum liability shall be calculated in proportion to the period.

¹⁾ Regulation No. 1211/2014.

Article 7

Liability without liquidation.

Under special circumstances, the board of the Fund may accept liability for claims under Article 5 without a prior liquidation of the employer's estate, providing that it is clear that the employer has demonstrably ceased operations and that attempts by the claimant to have his/her estate liquidated have proved unsuccessful, or that the costs of enforcing liquidation would be excessive in the opinion of the board of the Fund.

SECTION III

Interest and expenses.

Article 8

Interest.

[Claims under items *a–d* of Article 5 shall bear interest in accordance with Article 4 of the Interest and Indexation Act, No. 38/2001, from the due date to the date on which the Wage Guarantee Fund pays the claims.]¹⁾

Interest on compensation claims under item *e* of Article 5 shall be subject to the rules normally applying to such claims.

¹⁾ *Act No. 120/2009, Article 14. The provision applies to claims that have fallen due on 1 July 2009 or later, cf. Article 22 of the same Act.*

Article 9

Expenses and liquidation costs guarantee.

If a claim qualifies for liability under Article 5, the claimant shall have the right to receive reimbursement of reasonable expenses in connection with its collection, including legal costs awarded by a court.

In addition to expenses under paragraph 1, the Fund shall be liable to pay the liquidation costs guarantee paid by the employee or pension fund.

The board of the Wage Guarantee Fund shall set rules¹⁾, which the Minister shall endorse, on maximum expense payments and other conditions for the Fund's acceptance of liability for claims under paragraphs 1 and 2.

¹⁾ *Rules No. 644/2003.*

SECTION IV

Exemptions from Liability.

Article 10

Exemptions.

Claims by the managing director and directors of an insolvent company shall not qualify for liability under this Act. The same shall apply to the claims of an employee who was the owner, either alone or together with his/her spouse or other close associates, of a substantial share of the insolvent company and had a substantial influence on its operations.

The Wage Guarantee Fund may reject claims submitted by the spouses of the individuals listed in paragraph 1, other relatives or persons closely associated with them in other ways if it is demonstrated that their claims are unjustified in terms of the aforementioned connections.

Payment from the Fund may be reduced from the level claimed if the claim is considered unnaturally high in terms of the job at which the claimant worked, his/her working time and the wage terms prevalent in the relevant occupation or, as appropriate, in the enterprise which has become insolvent.

The provisions of paragraphs 1–3 shall not apply to compensation claims under item *e* of Article 5.

Article 11

Information.

Claimants shall state in their claims to the Fund whether the circumstances referred to in Article 10 applied to them at the time when their claims against the employer were established.

SECTION V

Claims and comments by the liquidator.

Article 12

Deadline for submitting claims.

Claims against the Wage Guarantee Fund shall only be considered if they are submitted to the Fund within six months of the publication of a call for claims against the employer's estate in the Official Gazette determining the final date for submitting such claims. Nevertheless, the board of the Fund may consider claims submitted within twelve months of the publication of the call if it is evident that it was not possible to make the claim earlier.

Provisions on the form and substance of claims presented to the Wage Guarantee Fund shall be made in regulations.

Article 13

Comments by the liquidator.

The liquidator of an employer's estate shall, as soon as possible, provide the Wage Guarantee Fund with written comments on every claim against the estate that can be regarded as qualifying for liability cover by the Fund under this Act. The liquidator's comments shall express his/her position on the justification of the claim and its priority ranking, irrespective of the asset position of the estate.

If no settlement meeting has been held regarding the employer's estate in order to adopt a position on the claims presented, but the liquidator of the estate declares that he/she has recognised the priority ranking of a claim for payment, either to some extent or entirely, then the Wage Guarantee Fund may treat the claim for payment as if the conditions of paragraph 1 had been met. If a claim has been paid by the Fund on the basis of such a declaration by the liquidator, but it later becomes apparent that recognition of the priority of the claim against the estate is rejected, the sum paid in excess for this reason shall not be reclaimable.

The Wage Guarantee Fund may request the liquidator to explain his/her comments in further detail if necessary.

Provisions on the form and substance of the liquidator's comments shall be made in regulations.

SECTION VI

Administration.

Article 14

Decisions on payment.

The Wage Guarantee Fund shall normally adopt a position on a claim that has been presented within four weeks of receiving the liquidator's comments under Article 13. If it is not possible to adopt a position on a claim by this deadline, e.g. due to the need to gather further materials, the claimant or his/her agent shall be informed of this and be given an opportunity of expressing his/her views to the Fund and presenting further materials. The Fund may demand, if necessary, that the claimant explain individual aspects of his/her claim.

If the liquidator's comments state that the justification of a claim is disputed, then the period specified in paragraph 1 shall run from the day on which the Fund receives notification of the resolution of the dispute.

Article 15

Announcements.

The Wage Guarantee Fund shall inform the claimant and the liquidator of an employer's estate of its conclusion regarding the Fund's obligation to make a payment. Announcements shall include an itemisation of the sum covered by the Fund's liability under Sections II and III.

Before a claim is paid by the Wage Guarantee Fund, it shall be established whether or not it has been paid, in part or entirely, from the employer's estate, and such payments shall be deducted in full from the payments made from the Fund according to the rules stated in Article 6.

Article 16

[Appeals.

Appeals may be lodged with [the Ministry]¹⁾ against decisions taken by the Wage Guarantee Fund on the basis of this Act.

Appeals shall be submitted to the Ministry in writing within two months of the date when the party to the case was informed of the decision. An appeal shall be considered as having been submitted in time if the letter presenting the appeal has been received by the ministry, or posted, before the expiry of this deadline.

[The Ministry]¹⁾ shall strive to deliver its ruling within two months of the date when it receives the appeal.

In other respects, procedure shall be in accordance with the Administrative Procedure Act.

The provisions of this Article do not affect parties' right to bring cases before the courts.]²⁾

¹⁾ Act No. 162/2010, Article 29. ²⁾ Act No. 131/2005, Article 1.

Article 17

Redemption of claims. Authority.

From the date on which the liquidator of an employer's estate receives a notification from the Wage Guarantee Fund under Article 15, the Fund shall have authority over the claim vis-à-vis the employer's estate to the extent that it takes the claim over. The Fund's claim shall have the same priority ranking in the list of claims against the estate as it would otherwise have had.

A person who presents a payment claim against the Wage Guarantee Fund under this Act may not engage in any activity which could reduce the Fund's right of recourse against the employer's estate. He/she may not, without special permission from the board of the Fund, assent to the acceptance in the course of insolvency proceedings of claims which were not presented before the deadline for the presentation of claims. If a claimant or his/her agent violates this provision, it shall result in the lapse of liability under this Act.

Article 18

Payment of tax at source.

The Wage Guarantee Fund shall calculate employees' tax at source to be deducted from claims that are approved under this Act and make the deduction over to the tax collection officers in accordance with the provisions of the Tax Deduction at Source Act.

SECTION VII

Vacation pay outstanding due to solvency difficulties.

Article 19

General conditions.

If the employer fails to pay vacation pay on time under Article 7 or 8 of the Holliday Allowance Act, No 30/1987, but without his/her estate having been accepted for liquidation proceedings, the employee or the appropriate trade union, on his/her behalf, may submit a claim to the Wage Guarantee Fund for the payment of the vacation pay. Such a claim shall be supported with satisfactory documents concerning the monetary sum involved, e.g. pay-slips and a certificate from the employer involved or his/her certified public accountant (auditor).

Article 20

Calls for payment by the employer and redemption of claims.

If an employee's claim meets the conditions of Article 19, the Wage Guarantee Fund shall immediately call on the employer to pay the claim within three weeks of the date of the call for payment.

If the employer presents objections or counter-arguments that the Fund considers admissible, e.g. that the claim has already been paid, or has lapsed for other reasons, the Fund shall dismiss the claim. Employees' claims shall also be dismissed if a demand for liquidation of the employer's estate has been presented.

If the provisions of paragraph 2 do not prevent the payment of the employee's claim, the Wage Guarantee Fund shall redeem the claim not less than five weeks after the date of its call for payment

under paragraph 1. The Fund's liability in other respects shall be subject to the provisions of item c of Article 5, Article 6 and Section IV, as appropriate.

Article 21

Enforceability and collection.

Claims by the Wage Guarantee Fund in respect of claims for vacation pay that it has redeemed shall be enforceable against the employer. In such cases, redeemed claims shall have the same status vis-à-vis the employer's estate as the employee's claim would have had.

Arrears interest shall be calculated on claims that have been redeemed under these rules in accordance with the Interest and Indexation Act, beginning 15 days after the redemption.

Procedure in other respects shall be in accordance with Section VI, as appropriate.

SECTION VIII

Role of the board, day-to-day management and financing.

Article 22

Role of the board of the Wage Guarantee Fund.

The board of the Wage Guarantee Fund shall be responsible for the keeping, day-to-day management and accounting of the Fund, acting on behalf of [the Minister],¹⁾ cf. paragraph 1 of Article 3.

In addition to attending to the tasks relating to the executive handling of the matters referred to the Fund, the board of the Wage Guarantee Fund shall represent the Fund and attend to other tasks relating to the application of this Act.

Before the end of September each year, the board of the Fund shall give the Minister an account of the Fund's financial standing and an estimate of the future trend in its expenses. At the same time, the board shall submit proposals to the Minister on the maximum sums specified in paragraph 1 of Article 6.

¹⁾ Act No. 162/2010, Article 29.

Article 23

Financing.

The Wage Guarantee Fund shall be financed by a special guarantee levy on paid wages, fees and calculated remuneration of any designation which is taxable. The provisions of the Social Security Tax Act shall apply as regards the reference base, payment obligation, payment periods, levying and collection of the guarantee levy.

The guarantee levy shall be [0.05%]¹⁾ of the reference base.

If the Fund lacks cash to honour its obligations under this Act, the board of the Fund shall immediately notify the Minister of this. The Treasury shall then provide the Fund with the cash it requires, and this shall be considered as a loan.

The guarantee levy shall be considered as an operating expense item under item 1 of Article 31, of [the Income Tax Act, No. 90/2003],²⁾ to the extent that it is based on wages which are considered as operating expenses under the same Article.

The Wage Guarantee Fund's operating expenses shall be paid from its revenues.

The annual accounts of the Fund shall be audited by the Icelandic National Audit Office.

¹⁾ Act No. 139/2013, Article 16. ²⁾ Act No. 129/2004, Article 147.

SECTION IX

Miscellaneous provisions.

Article 24

Assignment.

If an employee assigns his/her payment claim against his/her employer before the employer's estate is accepted for insolvency proceedings, the claim shall not be covered by liability under this Act. This shall not apply, however, if the claim was assigned to the employee's trade union, or if the claim was assigned entirely or partially to the Unemployment Insurance Fund.

The provisions of paragraph 1 shall also apply to the circumstances covered in Article 7 and Section VII.

Article 25
Information.

Government authorities, employers and other parties involved shall be obliged to provide the Wage Guarantee Fund with the information necessary for the Fund to deal with individual claims.

[The Wage Guarantee Fund shall provide legally valid institutions which guarantee the payment of workers' claims against employers' estates in other Member States of the Agreement on the European Economic Area, Switzerland or the Faroe Islands with all necessary information it may have regarding the claims of the workers concerned against employers' estates.]¹⁾

¹⁾ Act No. 26/2013, Article 2.

Article 26
Demands for repayment.

If payment is obtained from the Wage Guarantee Fund is obtained by giving incorrect information, or by concealing information that would have resulted in payment from the Fund under this Act being refused or reduced, the party who received the payment shall be obliged repay the amount he/she has wrongfully received.

Demands for repayment under paragraph 1 shall become invalid by expiry two years after payment is made.

If the board of the Wage Guarantee Fund considers that payment from the Fund has been obtained, or that an attempt has been made to obtain payment, in a criminal manner, the matter shall be referred to [the police for investigation].¹⁾

¹⁾ Act No. 88/2008, Article 234.

SECTION X
Authorisation to issue regulations. Commencement.

Article 27
Authorisation to issue regulations.

[The Minister]¹⁾ shall, after receiving the proposals of the board of the Wage Guarantee Act, issue further instructions on the application of this Act in the form of regulations²⁾.

¹⁾ Act No. 162/2010, Article 29. ²⁾ Regulation No. 339/1990. Regulation No. 462/2003.

[Article 27 a
Adoption.

This Act implements Directive 2008/94/EC of the European Parliament and of the Council, on the protection of employees in the event of the insolvency of their employer, as adopted by the Agreement on the European Economic Area by Decision of the EEA Joint Committee No. 51/2009 from 24 April 2009, on amendment on Annex XVIII to the EEA Agreement from 2 May 1992.]¹⁾

¹⁾ Act No. 107/2014, Article 2.

Article 28
Commencement. Jurisdiction of individual statutes.

This Act, which is enacted with reference to Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, shall take immediate effect.

Claims against the employers' estates that are declared bankrupt prior to the commencement of this Act shall be covered by liability under the Wage Guarantee Fund (Insolvencies) Act, No. 53/1993. The provisions of Article 10 of the present Act shall nevertheless take immediate effect regarding claims against employers' estates that are declared bankrupt prior to the commencement of this Act if they result in a more favourable conclusion for the claimant.

The provisions of item *d* of Article 5 shall take effect on 1 January 2004 regarding liability for premiums according to agreements on additional insurance cover and according to the provisions of collective agreements which become due for payment after the commencement of this Act, *cf.* paragraph 1, providing that the employer's estate is declared bankrupt after 1 January 2004.

The provisions of paragraph 1 of Article 6 on maximum liability in respect of employees' wage claims under items *a* and *b* of Article 5 shall take effect on 1 April 2003 in respect of claims that

become payable after that time. Up to that date, paragraph 2 of Article 5 of the Act No. 53/1993 shall apply.

The provisions of paragraph 1 of Article 6 regarding maximum liability in respect of claims under item *c* of Article 5 shall take immediate effect regarding claims that have become established but have not reached the maximum liability sums prior to the commencement of this Act. Claims in excess of maximum liability shall not be reduced to the extent that they were established prior to the commencement of this Act.

[Interim provisions.

I.

Without prejudice to item *a* of Article 5, account shall be taken of employees' wages for work in the service of the employer during the last three months prior to the reduction of their job proportion as a result of a reduction of operations by the employer due to special circumstances on the labour market providing that a demand for bankruptcy proceedings against the employer's estate is received by a district court within twelve months of the reduction of the employee's job proportion. A condition for this shall be that the employee shall have been employed for at least six continuous months in the same job proportion by the bankrupted employer prior to the reduction of his/her job proportion as a result of a reduction of operations by the employer. In other respects, the provisions of item *a* of Article 5 shall apply.

Without prejudice to item *b* of Article 5, when compensation for loss of wages for up to three months due to the termination of an employment contract is calculated, account shall be taken of the employee's wages under paragraph 1 providing that a demand for bankruptcy proceedings against the employer's estate is received by a district court within twelve months of the reduction of the employee's job proportion. A condition for this shall be that the employee shall have been employed for at least six continuous months in the same job proportion by the bankrupted employer prior to the reduction of his/her job proportion as a result of a reduction of operations by the employer. In other respects, the provisions of item *b* of Article 5 shall apply.

This provision shall apply to claims by employees who reduce their job proportion during the period from 1 October 2008 to 31 December 2009 (inclusive) at their employer's request as a result of a reduction of operations by the employer which can be attributed to special circumstances on the labour market.]¹⁾

¹⁾ Act No. 131/2008, Article 2.

[II.

...]¹⁾²⁾
¹⁾ Act No. 139/2013, Article 17. 2) Act No. 164/2011, Article 3.

*[This translation is published for information only.
The original Icelandic text is published in the Law Gazette.
In case of a possible discrepancy, the original Icelandic text applies.]*