1.

### What are my rights if my employer declares bankruptcy?

If your employer has filed for bankruptcy, it means that the business is no longer able to pay off its debts to its creditors, and the company has asked the court to help it either plan a repayment schedule ("Chapter 11" bankruptcy) or sell off all its property and use the money to pay off the creditors ("Chapter 7" bankruptcy). If the company owes you wages, you will be considered a creditor of the bankrupt company.

The bankruptcy laws line up ("prioritize") creditors in the order in which they will be paid off. Creditors who are owed wages, salaries, or commissions are given a high priority for repayment. Each individual employee of a bankrupt business is given a priority of up to $11,725 (as of 2010, and adjusted every three years thereafter) of the wages they earned up to 180 days before the company filed for bankruptcy. However, "secured creditors" are first in line, and therefore ahead of employees, for repayment. (Secured creditors are banks or other commercial lenders who are entitled to repossess or seize property if payments are missed.) Because secured creditors are generally owed the most money (usually for property and equipment loans), there often is not much money left over to give to the creditors, such as employees, who are in line after them. Sometimes, creditors in line behind secured creditors may only receive a penny for every dollar they are actually owed.

In order to protect your rights as a creditor of your bankrupt employer, you should find out the county where the company filed the bankruptcy petition and call the clerk of the United States Bankruptcy Court for that county. (Look in the U.S. Government listings of the phone book.) Ask the clerk how to submit a "Proof of Claim" form, which is the form that the court will use to determine how much money to give you. Be sure to ask about the deadline by which you have to file your claim for wages. When completing the Proof of Claim form, you should include any supporting documentation, such as copies of contracts or timesheets.

As a creditor of the employer, you can participate in the bankruptcy court proceedings. Once you file the Proof of Claim form, the company's bankruptcy trustee should provide you with information and updates concerning the on-going bankruptcy proceedings.

2.

### My company declared bankruptcy after I filed a wage claim with the Labor Commissioner. What do I do?

Regardless of whether you have not yet filed a wage claim, are in the middle of the claim, or have already won a wage award from the Labor Commissioner, the bankruptcy law automatically "freezes" all legal actions against the company the minute they file for bankruptcy. The court could fine you for disregarding this "automatic stay" on legal actions, so it is very important that you stop pursuing your claim as soon as you hear of the bankruptcy. If you have an unpaid wage award, or feel you are owed wages but have not yet begun wage claim proceedings, you should submit it as a claim to the bankruptcy court on a Proof of Claim form, not to the Labor Commissioner.

3.

### If my employer goes bankrupt, what will happen to my health insurance?

The "Consolidated Omnibus Budget Reconciliation Act" (COBRA) usually allows employees to continue their health insurance when they lose their job. In the case of bankruptcy, however, whether an employee will be entitled to continued coverage depends on the type of bankruptcy that the employer declares. An employee may be able to exercise their COBRA rights in the case of a Chapter 11 bankruptcy, since the company will stay in business and may continue to provide a group plan for the employees it retains. In a Chapter 7 liquidation, where the entire company dissolves all group plans made available to employees, there will be no opportunity for workers to exercise their COBRA rights.

The law requires the employer's group health plan to notify the employees within 60 days if there will be any reduction in benefits, but if your employer declares bankruptcy, you should contact the group health plan administrator to determine the status of your health coverage. The Summary Plan Description of Benefits (which you should have received shortly after enrolling in the health plan) will contain information on how to contact the plan administrator . Questions you may want to ask include:

- Will the plan continue or be terminated?

- Who will be acting as plan administrator of the plans during and after the bankruptcy?
- Will COBRA continuation coverage be offered to terminated employees?
- If the health plan is to be terminated, how will outstanding health claims be paid, and when will certificates of creditable coverage (showing, among other things, the dates of enrollment in your employer's health plan) be issued?

If the employer eliminates your group plan in the bankruptcy, COBRA extension of coverage will not be available. The Health Insurance Portability and Accountability Act (HIPAA) will guarantee, under certain circumstances, that you could then convert the group plan into individual coverage. Contact your insurance provider for more information on how you can exercise your rights under HIPAA.

4.

### My employer's business has been sold. Who should I bring my employment-related claims against: my old employer or the new owner?

Whether you can sue the new employer (the successor) for claims you had against the old employer (the predecessor) may depend on the type of sale that has occurred. If it was a sale of the entire business, chances are good that the new employer has inherited all of the liabilities (including your unresolved claim) of the business from the previous owner. However, some transactions will limit the responsibilities of the new owner by specific language in the sale contract, or by structuring the sale as just a sale of the assets, not the liabilities, of the business. In that situation, you may need to bring your claims against the old entity.

Courts will sometimes require the new employer to give you your job back, or to pay you back wages. In order to do so, however, the court will require that the new employer was aware of your claim when they purchased the business, and that they are continuing substantially the same business with the same employees and products. You should seek legal advice regarding who the appropriate defendant should be in your employment-related claim.

If you were entitled to "separation benefits" from the old employer (such as severance, or "in lieu of notice" pay) upon your discharge, the sale of the business triggers your right to collect these benefits, even if your work continues with the new employer. The law, however, is unclear as to which party to the sale assumes the COBRA responsibilities.

5.

### I showed up for work and the doors were permanently locked. What should I do? How can I find my employer?

If an employer has closed up shop or left town without notifying you, your first priority should be to restore your income, whether this means signing up for unemployment insurance or immediately moving on to another job. In the meantime, you may wish to track down the employer regarding any number of reasons, including your entitlement to unpaid wages or a letter of recommendation.

There are several places where you might start looking for clues regarding the employer's whereabouts:

- The post office may have a forwarding address for the employer.
- Information ("411") may list a new telephone number for the employer.
- The landlord or property management company of the employer's place of business may have some information regarding the plans or whereabouts of its missing tenant.
- All businesses are required to register with the city, so the city Treasurer/Tax Collector, or other city agencies that require permits (such as the Department of Public Health), may have information about the employer.
- The business may have been required to register with a state bureau, which also may have some leads. For example, any business that sells or leases goods must register with the California State Board of Equalization. Telephone numbers for relevant state agencies should be listed in the white pages of the telephone book under "State Government Offices."
- Corporations, Limited Partnerships, and Limited Liability Companies must file with the California Secretary of State. Agents for service of process for all corporations registered in California can be found under the "California Business Search" link.

6.

### I have a legal claim against my employer, but they've disappeared. What are my rights?

If an employer violates your rights, they are required to compensate you under the law no matter where they run. However, even if you are able to track down the employer and bring the claim before it expires (the deadline to sue on written contracts is four years; for oral contracts, two years), you should seriously consider whether suing is going to be worth the effort. If the business no longer has a permanent address or any source of income, it will be extremely difficult to collect on any court judgment that you might receive. Without income or qualifying property, the entity may be "judgment proof," and suing will only waste your time and money.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.