

## Bonuses – Employees right **versus** Employers right to decide to pay

Labour law is silent on the matter of bonuses. Whether the employer decides to pay bonuses or not is a matter entirely for the employer to decide. An employer who presently does not pay bonuses can continue to do so without fear of being accused of unfair labour practice. However, certain bargaining councils do make provision for the payment of bonuses. Employers must respect Collective agreements and that of the Bargaining Council.

For those employers who have been paying bonuses, the situation is a little different. Why? Well, your employees have come to expect the payment of bonuses as their right. Therefore it is essential that the terms and conditions applicable to the payment of bonuses are clearly stated in every employment contract. If it is not your practice to pay bonuses of any sort, this important point must be included in the employment contract.

If you the employer wishes to change the status quo regarding the bonus payments, perhaps you intend to reduce it; or pay at a different time of the year; or split an annual payment into 2 or 3 three separate payments, you will have to consult with the employees, explain the problems you are facing and motivate the employees to accept the new system.

Remember such changes will constitute changes to the employee's terms and conditions of employment. As the employer you cannot make such changes unilaterally, this must be negotiated with the employees.

Should the employees refuse to accept the change and you the employer have sound and reasonable commercial rationale for making the change, then the employer can proceed to implement after negotiations even though all employees may not agree to it. Yes, a few disgruntled employees may proceed to file a case of unfair labour practice.

In short, employers will do well to remember to be fair, be equitable and advise your employees in good time if there is a problem with the bonus payment or if you plan to move away from the established payment procedures.

### **The 13<sup>th</sup> cheque**

This bonus is normally called the Christmas bonus and classed as a gratuity, meaning, a payment of gratitude by the employer to the employee in recognition of a job well done or for the employee going the extra mile.

Over the years this has changed, employees have come to expect the payment of the 13<sup>th</sup> cheque as a right or condition of employment. When job applicants attend interviews, most ask the question whether the 13<sup>th</sup> cheque is paid. Employees and applicants alike have come to expect the 13<sup>th</sup> cheque payment irrespective of whether the job is performed well or whether they have gone the extra mile. They want the payment of 13<sup>th</sup> cheque to be included as a condition of employment.

It is the responsibility of the employer to ensure that employees and management understand each other well and maintains a transparent relationship, especially where contractual payments are concerned. Many employers these days have done away with the payment of 13<sup>th</sup> cheque and have decided to incorporate the amount into the employee's basic salary.

If you choose to continue to pay 13<sup>th</sup> cheque bonuses at year–end, you should by the middle of the year have an idea of your profitability, staff performance or whatever other criteria you use that may prevent you from paying bonuses that year. It is the duty of management to consult with the staff at the earliest possible time, to warn them of the possibility that bonuses may not be paid, or may be reduced this year. Unilaterally deciding not to pay bonuses and then delaying this information from being discussed with employees will prove to be irresponsible and will not solve the problem.

Yes, the right of expectation does not afford the employee the absolute right to demand and be paid the bonus, but it does afford him the right of being heard before the decision not to pay bonuses was made by the employer.

There is no greater impediment to achieving productivity in this country than disgruntled employees.

### **The performance bonus**

This bonus is normally paid for good performance and is based on a percentage of the employee's salary or wages. It can also be based on a percentage of the profits achieved over and above what the department targets were. The performance bonus may also be paid to the department as a lump sum to be spilt up into equal amounts for each employee within that department. This would only apply if all members within that department are collectively responsible for the above-average performance.

Performance should be measured against company standards, not for occasional work done which exceeds company standards; instead performance should be measured for consistent work exceeding company standards. Be sure to maintain proper records for performance assessments.

Whatever your criteria for calculation it must be fair and equitable.

### **The production bonus**

This bonus is not based on performance measured against company standards; instead it is measured against production targets and the quality of production.

### **Example**

If a company sets a target for an employee / department to produce 100 widgets per hour and the employee or department produces 130 widgets consistently, then a production bonus will be justified.

Similarly, if the company rule for a telesales department is 5% rejection rate is acceptable and the department consistently achieves a rejection rate of 1% then a production bonus will be in order.