

## Are Employers Obligated to Pay Bonuses to Employees?

Many Employers are faced with this question at some point in time and it must be noted that there is absolutely no legislative imperative placed on Employers to pay bonuses to Employees and it therefore becomes a contractual issue. It must however be noted that some Bargaining Council Main Agreements may prescribe certain instances within which same must be paid, for instance, Leave Enhancement Bonuses.

Should there be no Collective Agreement or Sectoral Determination in place, the payment of bonuses will either be a written term & condition agreed to between the parties or even may have arisen as part of past practices within a business. In all instances, however, the payment of bonuses must be subject to assessment and determination by objective criteria, which the employee should be made aware of, which will avoid any allegations of arbitrary treatment resulting in an unfair labour practice in terms of Sections 186 & 191 of the Labour Relations Act (LRA).

Conversely to the above, if the payment of bonuses is not a practice within a Company, this must also be specifically stated within the contract of employment.

Employers must always be mindful of any practices that they may have allowed to develop over time in the paying of bonuses consistently, as this may give rise to what may be termed a legitimate expectation on the part of the Employee. In other words, by receiving a bonus the past few years, they could reasonably expect to receive one during a particular year in

question.

Whilst a reasonable expectation does not create an absolute right in terms of which an employee may demand the payment of a bonus, it does at the very least imply that an Employee should be given an opportunity to make representations and be advised why a bonus will not be paid going forward.

Accordingly, it is advised that if an Employer intends to pay his or her Employees bonuses, same must be clearly set out in a policy and must be subject to the meeting of objective criteria which will assist an employer in making a decision, alternatively, that an employer always provides that same is subject to their sole discretion and that no expectation will be created in terms of the payment of bonuses.

This will go a long way to avoiding any disputes between Employer and Employee which may escalate into a full-blown dispute relating to a unilateral change to terms and conditions of employment which may open a floodgate of other employees clamouring for the payment of bonuses.

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