



Bonuses: HR guide

Description

Introduction

Employers' **bonus** obligations will vary depending on the type of bonus.

Types of Bonus

At one end of the spectrum there are non-contractual discretionary **bonuses**. The key feature of these types of **bonuses** is that there is no obligation on the employer to have a **bonus** scheme or award payments.

In the middle there are **bonuses** which are partially discretionary. **Bonus** schemes may, for example, state that employees will be considered for a **bonus**. In these cases the employer usually has an obligation to exercise the discretion rationally. The Courts will, generally, though only interfere with the decision if the employer has acted in an irrational, arbitrary or perverse way.



On the other end of the scale there are **bonuses** which are calculated by reference to specific sales or performance targets. The terms of the **bonus** scheme will normally be clearer, providing an entitlement to payment rather than the employer exercising discretion. There may be complicated formulae for calculating the **bonus** based on sales or revenue.

Common bonus wording

[Employment contracts](#) often include wording stating that payment of a **bonus** in one year does not guarantee payment in subsequent years, **bonuses** are dependent on a number of factors (such as individual performance and company performance) and the **bonus rules** may change from time to time.



There may well also be a clause in the employment contract stating that eligibility for a **bonus** requires the employee to be in employment and neither the employee nor the employer to have given notice before the payment date.

Deferred awards and forfeiture

Depending on the **bonus** scheme, **bonuses** could be deferred in the form of cash, stock or options. Often, the **bonus scheme rules** will state that if the employee resigns before the award vests the award will be forfeited. There might be other forfeiture provisions too.

In redundancy situations employees may get good leaver status and awards which otherwise would have been lost either continue to vest on the usual vesting dates or are accelerated. Vesting may be conditional, for instance, on the employee not carrying out any detrimental activity such as soliciting clients/ employees or disclosing confidential information.



Provisions could also allow for **bonuses** to be clawed back. For example, the employee may have to repay the bonus if it's later discovered that they have committed serious misconduct or were reckless in their duties.

Discrimination

In determining **bonuses** employers must not [discriminate](#) by treating employees less favourably because of protected characteristics. These protected characteristics include sex, race, religion or belief, disability, age and sexual orientation. There have been a number of bonus cases where the Courts have found that employers have discriminated against employees.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need advice on **bonuses** or have other employment law queries please do not hesitate to [contact me on: 020 3797 1264](#).

Do check mattgingell.com regularly for updated information.