Bonus Season Query:
Could a Discretionary Bonus Decision Lead to an Employee Claim?

As bonus season begins to loom into view, many Organisations will be reviewing their annual bonus arrangements and preparing to communicate bonus decisions to Employees.

While some Organisations operate clearly defined bonus schemes, others retain discretion over whether a bonus is awarded and, if so, the amount payable.

However, having a discretionary bonus scheme does not mean that Organisations can make bonus decisions without risk. Our consultancy team has experience in managing queries from clients where an Employee has challenged the level of bonus awarded, particularly where the amount is lower than in previous years.

So, where an Organisation has exercised its discretion to award a lower bonus, what are the potential risks and what should Employers consider before responding to an Employee challenge?

Start with the Employment Contract

The first step is always to review the Employee's contract of employment and any relevant bonus scheme documentation.

Where the Organisation retains discretion to award a bonus, this should be clearly reflected in the contract, alongside any terms governing how the scheme operates.

Employers should also consider whether the contract refers to individual or Organisational performance criteria, targets or other factors that may influence the amount of bonus awarded. It is important to remember that the wording of the contract will form the starting point when assessing whether the Organisation has acted within its contractual rights.

Can You Justify the Level of Bonus Awarded?

Where an Employee challenges a reduced bonus payment, the Organisation should be prepared to explain the rationale behind the decision.

Was the lower bonus linked to overall Organisational performance, individual performance, or a combination of both?

If an Employee's performance has been cited as a reason for awarding a lower bonus, this should be supported by clear documentation and objective evidence.

For example, agreed Key Performance Indicators (KPIs), documented performance reviews and evidence of the Employee's progress against agreed targets can help demonstrate the basis for the decision.

Having transparent and consistently applied criteria is particularly important where Organisations are exercising discretion over bonus payments.

Could Custom and Practice Create a Contractual Entitlement?

Even where an employment contract expressly states that a bonus is discretionary, Organisations should consider whether an implied contractual entitlement may have arisen through custom and practice.

For example, if an Employee has received a bonus at a consistent level over a prolonged period, they may argue that this established practice has created an implied contractual entitlement. This does not automatically mean that an Employee is entitled to the same bonus every year. However, Organisations should be mindful that a history of consistent bonus payments may be relevant when assessing the contractual position.

It is therefore important to consider not only what the contract says, but also how the Organisation has operated its bonus scheme in practice.

What If the Organisation Decides to Discontinue the Bonus Scheme?

Organisations will typically retain discretion to discontinue a bonus scheme, subject to the terms of the relevant contractual arrangements.

However, where an Employee has already earned a bonus under the terms of the scheme before it was discontinued, they may retain an entitlement to payment up to the date the scheme ceased operating.

Employers should therefore carefully review the terms of the scheme and consider whether any bonus entitlement had already accrued before making changes or discontinuing payments.

What Claims Could an Employee Bring?

Where an Employee believes that they have been unfairly denied a bonus or that the Organisation has failed to honour a contractual entitlement, a number of potential claims may arise.

These can include:

- Breach of contract**:** Where the Employee believes the Organisation has failed to meet its contractual obligations in relation to bonus payments.
- Unlawful deduction from wages**:** Where the Employee considers that a bonus payment was contractually or otherwise legally due but was not paid.
- Constructive dismissal**:** In certain circumstances, an Employee may argue that the Organisation's actions amount to a fundamental breach of the employment relationship, entitling them to resign and potentially pursue a constructive dismissal claim.

The availability and merits of any claim will depend on the specific circumstances, including the contractual terms, the operation of the bonus scheme and the basis for the Organisation's decision.

Key Takeaway

A discretionary bonus scheme provides Organisations with flexibility, but that flexibility is not unlimited.

Employers must exercise discretion in good faith and consistently with the implied duty of trust and confidence that underpins the employment relationship.

Where a decision is challenged, having clear, objective and well-documented reasons for the level of bonus awarded can be critical in reducing the risk of an Employee claim.

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- HR Best Practice
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Adare is a team of expert-led Employment Law, Industrial Relations and best practice Human Resource Management consultants. If your Organisation needs advice, support, or guidance about employment law compliance, Employee relations or any HR issues, please contact Adare by calling 021 486 1420 or emailing info@adarehrm.ie to learn what services are available to support your business.