

Employment Law

ALERT | 17 November 2025



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SOUTH AFRICA

Year-end bonuses:
What employers need to know



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Year-end bonuses: What employers need to know

As the year draws to a close, questions around year-end bonuses arise. In South Africa, the law does not prescribe a general legal obligation on employers to pay a bonus. As always, whether a bonus must be paid, how it is calculated and when it may be withheld, could depend on many factors, including the source of the right and, if discretionary, the manner in which such discretion is exercised.



What is the legal status of year-end bonuses?

Although there are several types of bonus structures, they all fall into two broad categories.

Guaranteed payment

A contractual, or other, guaranteed payment, often referred to as a 'thirteenth cheque', is a contractually agreed term and condition of employment (e.g. agreed in a collective agreement or employment contract) or otherwise stipulated in a policy. Where an employee's contract of employment or an applicable collective agreement guarantees the right to receive payment of a bonus, that amount will ordinarily be due and payable to employees, subject to the terms of the agreement (e.g. employment at the time of payment). In these instances, the employer often has no discretion over whether to pay or how much to pay, beyond the terms of the agreement.

Discretionary bonus

A discretionary bonus is not guaranteed and often takes the form of participation in a bonus scheme. Assuming the employee participates in the scheme (i.e. meeting certain criteria, such as being permanently employed) and may be considered for the benefit under the scheme, it is commonplace for schemes to make the amount, the timing and ultimately the decision to award a bonus, strictly subject to the discretion of the employer. Usually, it is also conditional upon company, team and/or individual performance or commercial viability. However, the employee retains the right to fair labour practices, including the right to not be unfairly treated in relation to the provision of benefits. As such, arbitrary or capricious exercise of the discretion will give rise to an unfair labour practice when placed under scrutiny of the objective standard of fairness.

Year-end bonuses: What employers need to know

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Recent Case Law

Absent a guaranteed right in a contract, policy or bargaining instrument, there is no legislation that obliges employers to pay year-end bonuses.

In the recent matter of *UIS Analytical Services (Pty) Ltd v IDUSA* [2025] 2 BLLR 207 (LC) the Labour Court distinguished between a contractual right to a bonus and a bonus as a discretionary benefit. It affirmed that for a bonus to be a right, it must be established by contract, policy or law, or by an existing policy dispensation, subject to discretion. Simply put, a right, whether unconditional (so-called 'guaranteed') or unconditional (not 'guaranteed') to receive payment of a bonus amount must exist, whether contained in a contract or policy. Without such a right, the demand for a bonus constitutes an issue of interest, to be pursued through collective bargaining, including industrial action if unresolved.

The court found that even though a bonus qualifies as a 'benefit' under the Labour Relations Act 66 of 1995, this classification alone does not confer a right or entitlement to employees, particularly where the payment of bonuses remains **subject to negotiation** and explicit agreement, or the **employer's exclusive discretion**, as per employment contracts. In terms of the latter, unless and until the discretion has been exercised, or the time has passed for it to be exercised, an employee has, at best, a contingent right not capable of judicial or other enforcement.

Year-end bonuses: What employers need to know

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Key takeaways

- Employers should ensure clarity regarding the source and structure of any year-end payment.
- If a thirteenth cheque or guaranteed amount is agreed upon, it must be honoured according to its terms.
- For discretionary bonuses, employers should clearly define the scheme rules, eligibility criteria, performance measures and any preconditions, such as business performance thresholds and affordability.
- When exercising discretion, decisions should be documented, aligned with established criteria and applied consistently across comparable employees and teams.
- Where individual performance is considered, deliverables and key performance indicators must be communicated, measured and assessed fairly. If business performance or commercial viability limits the bonus pool, this rationale should be well justified.
- Transparency, documentation and consistent application are essential to mitigate legal risks.

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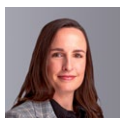
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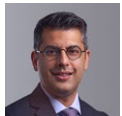
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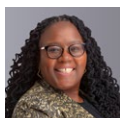
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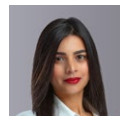
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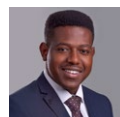
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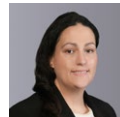
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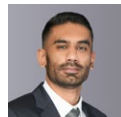
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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