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How to properly draft a bonus clause?

Everyone doing labour/employment work is aware how important the wording of a bonus clause in an employment contract is. Employees, particularly employees in higher positions are frequently offered performance related extra pays, such as a bonus scheme. In Hungary, except the fundamentals, the bonus is not regulated by explicit laws; court practice shapes the applicable rules which have recently been strengthened by a Supreme Court (Curia) decision.

Bonus is an allowance the conditions of which are determined by the employer in advance and that is payable to the employee if the conditions are fulfilled. It is the discretionary right of the employer to decide whether the employee is subject to a bonus scheme, as well as to determine the conditions, such as tasks or goals that need to be fulfilled or achieved by the employee in order to be entitled to bonus payment. The eligibility and the details can be specified either in the employment contract, in a separate agreement, in an internal regulation (company policy) or in a unilateral statement.

Please, note that if such bonus scheme is included in the employment contract or in an agreement concluded with the employee, then the conditions can only be amended with the consent of the employee.

If the employer undertakes in the employment contract the obligation to pay bonus to the employee without any further specification and without the determination of the bonus tasks/goals, then this establishes by itself the employee's entitlement to bonus without any further condition.

If the employer undertakes in the employment contract that the bonus tasks/goals will be determined later by the employer, but the employer fails to determine such, then the employee will be entitled to bonus. Also, if the employer fails to determine the bonus tasks or goals in proper time with the consequence that the bonus tasks/goals cannot be achieved any more, then again, the employee will be entitled to the bonus payment.

Once the bonus tasks/goals are determined by the employer and the employee has commenced the fulfilment of the tasks in order to achieve the goal, the goals cannot be unilaterally withdrawn.

As the amendment of the conditions may be difficult or even impossible, it is advisable to determine exceptions, restrictions and limitations to the bonus clause, such as a time limit until when the conditions are guaranteed and after which the employer has the right to review the conditions of the bonus scheme.

If the conditions of the bonus scheme are determined unilaterally in an internal regulation or in a statement, the employer has considerably more freedom to modify the conditions. However, as such unilateral act is still an undertaking to pay bonus, the limitations and the explicit discretionary nature are advisable to be incorporated into the regulation/statement.

It is also important that the employer has the burden of proof to evidence that its employees have actually received and acknowledged the internal regulations/policy. We note that this may prove difficult, e.g. if the communication between the employer and the employees takes place through the company's intranet. Employers should make sure that they can prove the receipt of the regulations/policy by the employee if contested.

Finally, in the course of the work performance evaluation, the employer needs to pay attention to the requirement of equal treatment in case of employees being under the scope of the same bonus scheme.

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