

Fair bonus treatment

Making sure everybody gets equal treatment



Overview

Bonuses have become a very important element of how many people get paid. Some are guaranteed and paid across the board to the whole company; others are discretionary and based on individual performance.

For more information on the distinctions between these different structures please see our factsheet 'Bonus Pay, your rights and issues surrounding them'.

This factsheet looks at the problems which arise when the criteria for payment of bonuses lack transparency or are discriminatory.

How can discrimination occur?

If your bonus is based on individual performance, it can be directly related to the amount of profit or business that you create. However, you could be prevented from earning that profit or business because of discriminatory treatment by your employer. This could involve being excluded from marketing events with clients or important meetings; being excluded from communications; not being passed new opportunities etc.

Under the Equality Act 2010, if this treatment is because of your sex, pregnancy or maternity, gender assignment, marriage or civil partnership, race, age, disability, religion or belief or sexual orientation and you receive a bonus payment which is lower than that paid to a comparable employee (or they received a bonus and you do not), you could have a claim.

Sex discrimination

The majority of cases brought in the Courts concern sex discrimination, where a woman has been paid a lower bonus than that of a male comparator. This may be because the woman is less favourably treated for being a woman, because she is pregnant or because of her absence on maternity leave.

For more information on sex discrimination, see our factsheet 'Sex Discrimination - Sex Discrimination in employment and your legal rights', part of the Employment Law series.

Direct sex discrimination

It is direct sex discrimination to pay a woman a lower bonus than a comparable man, where the employer has no explanation for doing so. There have been cases, particularly in the City, concerning discretionary bonuses which lacked transparency. Since the employers had no written records for awarding bonuses, it was very difficult for them to explain why female employees had been awarded less than male employees.

Pregnancy

If a woman is awarded a lower bonus than colleagues and can show that this was due to being pregnant, or seeking/taking maternity leave, then this will be direct discrimination. In such a case, the woman would not have to show a male comparator.

Absence on maternity leave

A common question is whether an employer can reduce a bonus payment because an employee is, or has been, absent on maternity leave for part of the bonus year. It is important to look at what the bonus is based on, such as attendance, rewarding loyalty or performance.

Where a bonus is contractual and dependent on the performance of the company as a whole or individual performance over a specified period, an employer may pro-rata the bonus payment to reflect a maternity absence as long as the two week compulsory maternity leave period is not treated as absence.

However, where the bonus is discretionary or a contractual retention bonus or award for service, it may be sex discrimination if an employer pays a lower amount due to maternity absence. This is a difficult area and each case will depend on its facts. It is important to get specific legal advice in such situations.

For more information on maternity and pregnancy related discrimination see our factsheet 'Maternity Rights', part of the Employment Law Series.

Age discrimination

The Equality Act 2010 makes it unlawful to discriminate against a person because of age. Protection extends to both younger and older workers.

Where a bonus is awarded after reaching a certain length of service this may be indirectly age discriminatory, because the older a person is, the more likely he or she is to have longer service. However, a fixed bonus earned by five years service or less is exempt. If the bonus is paid after reaching more than five years service, an employer must justify its payment. They need to show the benefit is used to reflect the higher level of experience of the employee, or encourage the loyalty or motivation of employees, or to fulfil another legitimate business need.

If an employer pays a bonus to an employee of one particular age, but not to another of a different age, the latter employee may well be able to claim age discrimination.

In this case, an employer would have to show that such a difference in treatment is a 'proportionate means of achieving a legitimate aim'. This is quite a tough test and the employer would have to produce evidence to support such a claim.

Please note that strict time limits for bringing a claim apply. You should therefore take prompt legal advice if you think you may have a claim.

For more information on age discrimination see our factsheet '*Age Concerns*', part of the *Employment Law series*.


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Contact Us

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