IT’S “13TH CHEQUE” TIME AGAIN: MUST YOU PAY ANNUAL BONUSES?

Once again November is upon us, and no doubt employees around the country are starting to dream of all the good things they can do with that “Christmas” bonus coming their way. If you are one of them perhaps you plan to pay off debt or to re-charge the family’s batteries with a special holiday. Or perhaps you just want to reward yourself and your loved ones with a bit of free-spending on a luxury or two to celebrate a special time of year.

That’s all well and good, but the hard reality is that every year a percentage of employers decide that they can’t afford a sudden doubling of their staff costs and will call everyone together to say something like “Sorry guys, times are really tough so no bonuses this year. You’re lucky to still have jobs”.

Disappointment and anger will no doubt lead to thoughts of CCMA referral and legal action, but none of that is necessary if both employers and employees (a) understand the law, (b) prepare and plan properly, and (c) communicate effectively long before hopes are raised then shattered.

Firstly, what does our law say?

It is a persistent myth that our law automatically forces employers to pay annual bonuses. Not so – nothing in our labour legislation or employment law says anything of the sort.

What our law does say to employers is this –

If your employment contracts say you must pay bonuses, your employees have an enforceable legal right to receive them. This is just standard contractual law – both you and your employees are held to your agreements.

You must consider not only what your employment contracts themselves provide, but also any company policies, collective agreements and the like.

Check also whether any conditions – like profitability of the business or employee performance or contribution to profitability – are specified. And are you given unlimited discretion in deciding whether or not to award bonuses?

Even where nothing has actually been agreed as above, you may still be bound to pay annual bonuses if you have paid them regularly in the past. This is because departing from any established practice or custom without prior employee consultation can be seen as an unfair labour practice. The law aside, employee morale will naturally plummet if expectations of a bonus have been built up over the years but are then dashed at short notice.

Be careful of differentiating between employees performing the same or similar work – that’s a recipe for dispute and accusations of unfair labour practice.

Prepare and plan

Employers: Have your lawyer check all your employment contracts and company policies to make sure that you have full discretion and will never be forced to pay bonuses your business can’t afford. Take advice on how you can regularly pay bonuses in good years without creating “rights of expectation” enforceable by your employees in bad years. Use cash flow projections to give you (and your employees) early warning of any inability to pay bonuses this year.

Employees: Don’t spend your bonus until you know for certain how much (if anything) is actually coming your way. And remember that SARS could be taking a bigger than normal slice out of this particular pie – ask your employer for an estimate of how much from the PAYE deduction tables. And in planning how to spend your bonus you can do a lot worse than follow the tips in an article like The Post’s “Use your 13th cheque wisely” here.

Communicate, communicate!

Whichever side of the employment contract you are on, open and effective communication will always be the key to avoiding false hope and bitter disappointment when it comes to bonus time.

So as an employee don’t be shy to ask the boss about his/her bonus plans and if as an employer you have any doubt at all about your business’ capacity and/or willingness to pay bonuses this year, tell your employees what to expect before expectations build up. After, of course, taking legal advice if you have any doubt as to your legal position in this regard – our labour laws are complex and getting them wrong can be costly!