

# Bonus pay for international executives

Your rights and issues surrounding them



## Overview

For many international executives bonuses form a significant part of their overall employment package. If your contract is governed by UK law or if your employment has a sufficient connection with the UK, you may be able to deal with any dispute arising in relation to your bonus in the UK.

So what are your rights and what can you expect from your employer?

### Guaranteed or discretionary?

Bonus schemes may be either guaranteed under contract or discretionary. Many schemes are a mixture of both, which means that while you have the right to be considered for a bonus, the employer has the final say as to whether to pay out or not.

You will need to look at the terms of your employment contract and the bonus documentation to work out whether your bonus is guaranteed or discretionary. This can be a complex question so if you are still not sure of your position, you may wish to seek legal advice.

### Guaranteed bonuses

Perhaps the most common form of bonus to be guaranteed under contract is the 'golden handshake', where your new contract guarantees you a certain bonus regardless of company or individual performance. This is often to compensate for a bonus payment lost at a previous employer.

In these cases, there is usually no element of discretion and provided you are in employment at the specified time and your contract is properly drafted, you should get a bonus.

If your employer fails to pay your contractual bonus by the due date, you will have a claim for recovery of a debt. This claim can be brought in either the County Court or the High Court, depending on the value of the claim. There is a six year time limit running from the date the bonus should have been paid. It may also be possible to bring this claim in a British Employment Tribunal, although the time limit is much shorter at three months less one day of the failure to pay.

Some contracts have a clause saying that a contractual bonus will not be paid if your employment is terminated 'for cause', such as alleged gross misconduct or if you are not in employment on the payment date. In these circumstances, if you can show there was no gross misconduct, or that you were still employed, you may be able to bring a claim for the bonus.

### Discretionary bonuses

In most bonus schemes, employers give themselves discretion to decide who will be eligible for a bonus, the amount payable and even whether to pay any bonuses at all in a particular year. You may think that if your contract builds in an

element of discretion, you cannot challenge your employer's decision, but in practice, there is no such thing in law as a purely 'discretionary' bonus. It is an implied term of any bonus scheme that you are entitled to expect your employer's discretion to be exercised in a way which is not irrational or perverse. The exercise of discretion involves two distinct decisions by the employer; whether to award a bonus and if so, how much. Both decisions are subject to the implied term. The UK courts will strive to give practical effect to the reality of the bargain struck between the employer and employee in respect of bonuses.

Employers will also usually give themselves discretion to amend the terms of the bonus scheme from time to time. If your employer has this discretion, the discretion should be used properly.

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## Contact us:

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### What a Court considers

In deciding whether a discretionary bonus has been properly assessed, a Court will usually consider:

- What the contract says about the relevant performance factors
- The performance of the department
- The employee's performance
- The treatment of similarly performing employees
- Industry custom and practice

If your employer decided not to pay bonuses, but had previously written to you stating that bonuses would be paid, this is likely to amount to a breach of contract. This is because the bonus payment becomes contractually due once it is communicated to you in writing.

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### Get legal advice

If you are in a discretionary bonus scheme and you are thinking of resigning, you should get legal advice first to make sure that you do not miss out on any bonus payments.

If you get a bonus that you think is unfair, especially if you are awarded a nil bonus and have worked well throughout the bonus year, you should also get advice on whether this can be challenged in law.

If a bonus award is clearly unfair it is often possible to negotiate a settlement directly with the employer, without having to go to Court.

If you think that you have been awarded an unfair bonus for reasons related to your sex, pregnancy/maternity leave, race, age, disability, religion or belief or sexual orientation, see our factsheet '**Fair Bonus Treatment**', part of the Employment Law series.



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Produced on behalf of



The Lawyers International Network  
for Employees and Executives.

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