Employee bonuses in Japan

A high level outline of the obligations that apply in relation to bonuses in Japan.

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An employer is not legally obliged to pay bonuses unless it agrees to do so with its employees in an employment agreement or its work rules. However, it is very common to pay bonuses as part of employees’ remuneration packages throughout the industries so as to motivate the employees.

Structuring bonuses

There are no specific restrictions on how a bonus scheme can be set up or structured.

Bonuses can be expressed as discretionary, a specific amount, a specific percentage of turnover or any other formulation. Note, however, if bonuses are expressed and fixed as a specific amount, the amount must be included in the basic pay when calculating increased wages for overtime, holiday or midnight work.

The only restrictions are those of the general law that an employer must not discriminate on any of the prohibited grounds.

Discretionary bonuses

Some employers express bonuses to be entirely at its discretion. The scheme may (or may not) set out some of the factors that may be taken into account by the employer. Typically, the factors that an employer might take into account when exercising discretion include the employer’s profitability and the employee’s individual performance and contribution.

Operating a bonus scheme

Whilst a bonus scheme may state that an individual is only entitled to such bonus as the employer may in its absolute discretion decide, that discretion should not be exercised in manner which is perverse, irrational or otherwise unreasonable. Managers making recommendations must be aware that they may in the future have to justify their recommendation in court.

If a bonus is discretionary, the employer has the discretion to pay a nil bonus. However, even if a bonus is described as being discretionary, if an employer pays the same amount or calculates an amount by the same formula every year, a court may find that such amount or formula constitutes common labour practices, and limits the employer’s discretion.
With a guaranteed bonus, the employer’s duties will depend upon the exact wording of the bonus.

**Requirement that individual be in employment**

It is common for a bonus scheme to state that in order to be eligible to receive a bonus award an employee must still be actively employed by the employer on the payment date. On the other hand, it is not common to state that an employee must not have, at the payment date, either given or received notice of termination of employment for any reason whatsoever so as to be eligible to receive a bonus award.

If there is a clause which requires an employee to be actively employed on the payment day so as to be eligible for the bonuses, but at any time before the payment date, the employee’s employment terminates for any reason, the employee does not have any entitlement to a bonus, either pro-rated or otherwise. The legality of such clause has been upheld by case law. On the other hand, case law has also held that an employer was not entitled to reduce a bonus by more than 20% where an employee was due to leave shortly after the payment date.

**Poor performers**

In discretionary bonus schemes, performance is a criterion that is very relevant to the assessment of the bonus award and the weighting attached to this criterion is often significant. The employer must still exercise its discretion fairly and if other employees in the same division are receiving bonus awards based on factors other than their performance these other factors should not be automatically eliminated from consideration for the poor performer’s bonus award.

With guaranteed bonuses, this will depend upon the precise wording of the bonus scheme.

**Maternity leave**

An employer cannot treat an employee disadvantageously because the employee has taken maternity leave and/or childcare leave. An employer can, however, treat a period unworked due to maternity leave and/or childcare leave during the relevant year as unworked, but cannot regard a period longer than the period actually unworked as unworked.

**Part time employees**

An employer can freely design its bonus scheme, which means that it can exclude part-time employees from bonuses paid to its full time employees. This means that it is not necessary to pay part time employees a pro-rated bonus even when the bonus criteria are related to time spent for working. Also, the employer does not have to consider the level of bonus that they would have received had they been working full time and then reduce this to reflect the hours that they actually worked.

An employer must, however, try to equate part-time employees’ salary (including bonus) with that of full time employees taking into account the content of job, the outcome of job, willingness, ability, experience, etc. of the part time employees. Employers must also not discriminate against part-time employees if the content of their role and their responsibilities are the same as those of a full time employee and their role and their responsibility is to change in the same way as those of a full time employee changes.

**Termination**

An employer does not have to take a bonus into account when calculating what an employee is entitled to on
termination, unless the terms of the bonus scheme require it to do so.

The only severance pay that an employer is required by law to make is the payment in lieu of notice in a case 30-days notice is not provided.

Claims

Any category of employee can bring a claim challenging the level of their bonus. An employee who wants to bring a claim will normally file a lawsuit or a petition for labour tribunal proceedings.

A bonus claim must be brought within two years of the pay day.

Further information on bonuses in Japan is available from our International Employment Issues microsite here.