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WHAT DOES THE LAW SAY ABOUT BONUSES AND INCREASES?

In the dynamic landscape of South African Labour and Employment Law, there are often questions and misconceptions about the obligations of employers, particularly when it comes to annual salary increases and bonuses.

Annual Salary Increases

In the realm of employer responsibilities, the question frequently arises: Is an employer legally obliged to provide annual salary increases? The South African legal framework takes a nuanced approach. Unlike some countries, the labour legislation in South Africa doesn't mandate annual salary increases unless stipulated in a main or collective agreement between employer and employee. In the absence of such an agreement, salary increases become a matter of negotiation and agreement between the parties involved.

Employer and Employee Perspectives

From the employer's standpoint, economic challenges, such as inflation and unforeseen circumstances like the COVID-19 pandemic, can make it difficult to offer annual salary increases. Employers, driven by the need to ensure the sustainability of their businesses, may face constraints in meeting the expectations of annual salary hikes.

On the flip side, employees often view annual salary increases as a measure of goodwill and fair compensation, especially considering the rising cost of living.

Striking the right balance between these perspectives becomes crucial for fostering a positive employer-employee relationship.

Legalities Surrounding Salary Adjustments

While employers generally cannot unilaterally decrease an employee's agreed-upon annual salary, specific conditions must be met to effect any changes. The terms and conditions of employment, including annual salary, cannot be altered without consultation and mutual agreement between the employer and employees.

It's important to note that labour law doesn't impose a statutory requirement on employers to provide bonuses. The payment of bonuses is typically governed by employment contracts, policies, or established practices within a company.

Bonuses

In the legal landscape, bonuses are considered "benefits," as established in the Labour Appeal Court case of *Apollo Tyres South Africa Pty Ltd v CCMA and Others*. Bonuses, whether in the form of a 13th cheque or other guaranteed bonuses, are intricately linked to remuneration and are subject to contractual provisions.

The distinction between discretionary and non-discretionary bonuses is crucial. Discretionary bonuses, dependent on the employer's judgment, must be exercised fairly to avoid unfair labour practices, as emphasized in legal precedents like *Aucamp v SA Revenue Service and Public Servants Association obo Motsekoa v Department of Sports, Arts and Culture*.

In summary, when a bonus is a guaranteed right under a contract, remuneration policy, or industry-regulated agreement, it is generally payable. Disputes related to

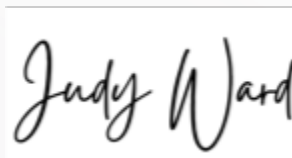
the exercise of an employer's discretion in bonus payments hinge on proving irrational, capricious, grossly unreasonable, or mala fide behaviour.

As always, we encourage open communication and a proactive approach to address any concerns related to employment matters.

Thank you for your continued trust in our services.

Wishing you and your families a blessed Christmas and a prosperous 2024.

Regards



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