

## Bonuses

### 1 . Entitlement to a bonus

A bonus is a payment an employer gives to staff in addition to their basic wages. This usually relates to:

- company performance
- individual performance
- a specific event, for example, an end-of-year bonus

There is no legal requirement for an employer to provide a bonus. However, bonus schemes can help employers to:

- keep employees engaged and motivated
- recognise and reward employee performance
- attract the best applicants for a role
- retain experienced staff

Bonuses can be:

- contractual – this means they're guaranteed in certain circumstances
- discretionary – this means they're not guaranteed

### Contractual bonuses

Contractual bonuses are sometimes known as compulsory bonuses. The employer must pay a contractual bonus if certain agreed criteria are met.

The employee's entitlement to a bonus should be recorded in their [written statement of employment particulars](#). This should clearly explain the criteria for the employee to get the bonus.

### Discretionary bonuses

Discretionary bonuses are sometimes known as voluntary bonuses or non-contractual bonuses.

The employer has some flexibility over whether or not to award a discretionary bonus. The decision might be linked to how well an employee or company performs. However, requirements for getting a discretionary bonus are not set in advance.

If a contract says a bonus is discretionary, the employer must still act fairly when deciding whether to pay it. If they do not act in a fair and reasonable way, their employee might be able to make a legal claim. This claim would be for breach of contract.

### Being clear in the contract

If an employee is entitled to a bonus, their written statement or contract should say this. This should make clear whether the bonus scheme is discretionary or contractual.

Employers offering a discretionary bonus should say clearly that it is not a contractual right. If a discretionary bonus scheme has unclear terms or wording, it could be interpreted as being contractual.

If it's not clear whether a bonus is discretionary or contractual, it's a good idea to [get legal advice](#).

## Custom and practice

Some employers might have regularly paid their employees a bonus without a written agreement. In this situation it is not always clear if the bonus is discretionary or contractual.

If there is no written agreement, the employee might be entitled to a bonus through 'custom and practice'.

[Find out more about custom and practice](#)

## Working patterns

Employers must not treat employees less favourably because they're:

- part-time employees
- on a fixed-term contract

## Part-time employees

Employers must not treat part-time employees less favourably than full-time employees.

Part-time employees are usually entitled to the same bonus as full-time employees, but on a pro-rata basis. Pro rata means in proportion to hours worked.

For example, an employee who works full time gets an end of year bonus of £500. An employee working in the same role for half the hours is entitled to a bonus of £250.

In some situations, employers do not have to treat part-time employees and full-time employees in the same way.

The employer must be able to show there is a good reason for the different treatment. This is called 'objective justification'.

[Find out more about part-time workers rights](#)

## Fixed term employees

Employers must not treat a fixed-term employee less favourably than a permanent employee.

Employees on fixed-term contracts are entitled to the same terms and conditions of employment as permanent employees in the same role. They are entitled to the same benefits or benefits of equal value. This includes bonus schemes.

In some situations, employers do not have to treat fixed term and permanent employees in the same way. The employer must be able to show there is a good reason for the different treatment. This is called 'objective justification'.

The employer might in some circumstances be able to objectively justify excluding a fixed-term employee from a bonus scheme. They would need to show that the fixed-term employee's contract as a whole is at least as favourable as that of a permanent employee.

[Find out more about fixed term employment contracts on GOV.UK](#)

## Changing or removing a bonus

An employer might need to change the terms of their bonus scheme, or to remove it.

### Contractual bonuses

If the bonus scheme is contractual, the employer will need to change employees' contracts.

Employers must follow the correct process when changing contracts.

[Find out more about changing an employment contract](#)

### Discretionary bonuses

If a bonus is discretionary (non-contractual), the employer must act reasonably when making changes.

For example, the employer should communicate changes clearly to employees. They should also give employees reasonable notice before changing or removing the bonus scheme.

## If a bonus is not paid

If a bonus has not been paid, the employee should raise it informally first, by [talking to the employer](#). This can help resolve things quickly if there has been a mistake.

If the employee talks to their employer, the employee should confirm what they've discussed in writing. For example, in a letter or email.

If the issue cannot be resolved informally, the employee can [raise a grievance](#). This is where the employee makes a formal complaint to their employer.

## Making a claim to an employment tribunal

If an employee has not been able to resolve the problem, they might be able to make a claim to an employment tribunal.

This will depend on whether the bonus is contractual or discretionary. If the bonus is contractual, the employee could make a claim to an employment tribunal for unlawful deduction of wages.

Find out more about:

- making a claim to an [employment tribunal](#)
- [employment tribunal time limits](#)

## Making a county court or sheriff court claim

If a bonus is contractual, an employee could make a breach of contract claim in the county court (in England and Wales). They have up to 6 years from the date of the breach to make a claim.

In Scotland, an employee could make a breach of contract claim in the sheriff court. The time limit for breach of contract in a sheriff court is 5 years from the date the employee had knowledge of the loss.

Employees considering a county court or sheriff court claim should [get legal advice](#) on their situation, to understand what will be involved.

## 2. When employees are off work

An employee's entitlement to bonuses when they are off work depends on the type of leave they are taking.

### Maternity leave

An employee's bonus entitlement whilst on maternity leave might depend on whether the bonus is based on:

- performance of the organisation
- performance of an individual employee

The law on maternity leave and bonuses can be complicated. It's important for employers to understand their legal responsibilities. If it is not clear whether an employee should get a bonus, it can be a good idea to [get legal advice](#).

#### Bonuses based on organisation performance

If a bonus is based only on the organisation's performance, the employee should receive this whilst on maternity leave. The employee still needs to meet the conditions attached to the bonus.

It could be [maternity discrimination](#) if an employer:

- does not pay this type of bonus to employees on maternity leave
- pays employees on maternity leave a lower amount than other employees

If the bonus is contractual the employer might also be breaching the contract.

#### Example of bonus based on organisation performance

Lou is on maternity leave. If the organisation makes enough profit, an end-of-year bonus of £250 is paid to all employees. The employer is paying the bonus this year.

Lou's contract says the bonus will only be paid to current employees who are not in a notice period.

As Lou is still employed and not under notice, they should receive the bonus.

#### Bonuses based on individual employee performance

If a bonus is based on individual performance, employers can 'pro-rata' payments for employees on maternity leave. Pro-rata in this situation means in proportion to the amount of the bonus year worked.

Employees on maternity leave will be entitled to a pro-rata bonus for the time that they:

- were at work, before their maternity leave started
- were on compulsory maternity leave (the first 2 weeks of maternity leave following the birth of the baby, or 4 weeks for factory workers)
- were working a keeping in touch (KIT) day

The employee still needs to meet the conditions attached to the bonus, such as achieving performance targets.

If an employer does not pay this type of bonus to employees on maternity leave, it could be:

- maternity discrimination
- unlawful deduction from wages

### Example of bonus based on individual employee performance

Jo is at work for 26 weeks of the bonus year, and on maternity leave for the other 26 weeks. Jo met all of their performance targets before going on maternity leave.

Jo's bonus should be calculated based on the 26 weeks they worked, plus their 2 weeks' compulsory maternity leave.

## Shared parental and adoption leave

An employee's bonus entitlement whilst on shared parental or adoption leave might depend on whether the bonus is based on the:

- performance of the organisation
- performance of an individual employee

### Bonuses based on organisation performance

If a bonus is based only on the organisation's performance, the employee should receive this whilst on shared parental or adoption leave. The employee still needs to meet the conditions attached to the bonus.

### Bonuses based on individual employee performance

If a bonus is based on individual performance, employers can 'pro-rata' payments for employees on shared parental or adoption leave. Pro-rata in this situation means in proportion to the amount of the bonus year worked.

Employees on shared parental or adoption leave will be entitled to a pro-rata bonus for the time that they:

- were at work, before their leave started
- were working a keeping in touch (KIT) day or shared parental leave in touch (SPLIT) day

The employee still needs to meet the conditions attached to the bonus, such as achieving performance targets.

If an employer does not pay this type of bonus to employees on shared parental or adoption leave, it could be unlawful deduction from wages.

## Sick leave

If a bonus is based only on the organisation's performance, the employee should receive this whilst on long-term sick leave.

If a bonus is based on individual performance, employers should be careful if excluding time spent on long-term sick leave. If an employee's health condition is disability-related, this could be [disability discrimination](#).

This is a complex area of law. If employers need more information on bonuses and sick leave, they should [get legal advice](#).

## Suspension

Suspension is when an employer tells an employee to temporarily stop carrying out work.

Suspension might be for medical reasons, or to allow an employer to carry out a disciplinary or grievance investigation.

Employees should continue to receive their pay and their contractual benefits while they are suspended. This includes any bonus payments.

Find out more about:

- [suspension during a work investigation](#)
- [medical suspension from work](#)

## Holiday pay

When calculating holiday pay, employers must include:

- payments linked to doing tasks required in the contract
- payments related to professional or personal status, for example for length of service, seniority or professional qualifications
- other payments, for example, overtime payments if an employee has regularly been paid these during the last year

Any bonuses that fall into one of these categories must be included when calculating holiday pay.

For example, a bonus based on individual performance is likely to be included in the calculation. This is because it could be classed as a payment linked to the performance of tasks in the contract.

Employers must include any relevant payments in at least 4 weeks of holiday pay.

If an employer pays a bonus annually, they should divide the amount by 52. They should add this amount to the employee's basic salary when calculating a week's holiday pay.

Some employers might include these payments in the full 5.6 weeks' paid holiday (statutory annual leave), but they do not have to.

### Bonuses that are not likely to be included

Some bonuses are not likely to be included when calculating holiday pay.

A contractual annual bonus that is linked to company performance only is unlikely to be included. This is because it is not based on the employee's performance of tasks in the contract.

Discretionary bonuses paid at a fixed sum to all workers are unlikely to be included. These payments are ones which are not linked to performance and are not regularly paid. For example, an end of year bonus that requires the employee to still be employed by the business when the payment is made.

[Find out more about holiday pay](#)

## 3. When employment ends

Most bonus schemes will make clear what an employee's entitlement is if they leave before the bonus is paid. This can depend on whether they resigned or were dismissed.

Employees should check the terms of their bonus scheme or contract.

Usually, employees who are dismissed for gross misconduct will not get their bonus. This is because the employee is considered to have breached their contract.

## Bonus clauses

It is common for bonus schemes to include a clause that states the bonus is only paid to employees:

- who are still employed at the bonus payment date
- who are not in their notice period

If the employee resigns or is dismissed with notice, they will not get their bonus. This applies even if they are still employed but are in their notice period on the bonus payment date.

## Redundancy

The employment contract should make clear what will happen to a bonus if an employee is made redundant.

Some employers will offer a pro-rata bonus for employees made redundant before the payment date. Pro-rata in this situation means in proportion to the amount of the bonus year worked.

An employee might be entitled to the bonus if they're under notice of redundancy when the bonus is paid.

[Find out more about redundancy pay](#)

## Get more advice and support

For more advice about bonuses, including if a bonus is not paid, you can:

- [contact the Acas helpline](#)
- talk to your trade union representative, if you're a member