

It's the season of the end-of-year bonus or of the 13th month!

Legally, there is no difference between an end-of-year bonus and a 13th month. Etymologically, the 13th month will most often correspond to a 13th month of gross salary paid in December whereas the end-of-year bonus will be a different (higher or lower) amount than the salary. It could be a flat-rate sum that is the same for all employees, or a percentage of the annual salary fixed according to seniority at times.

The law does not establish a right to an end-of-year bonus. Such a bonus may be granted on the basis of one of the following legal sources:

- A collective bargaining agreement concluded at sector level;
- A collective bargaining agreement concluded in the company;
- The company regulations;
- A written, individual agreement by and between the employer and the employee (contractual clause or amendment);
- A custom established in the company.

I. Who determines the conditions and procedures for granting the end-of-year bonus?

In general, the conditions for granting a bonus (for instance, the required seniority), its amount, the time of payment, and any prorated entitlement if the employee resigns or is made redundant before the bonus is paid, are defined in a collective bargaining agreement. An employer who wants to know his obligations must therefore determine whether such an agreement exists and how it is applied.

Nearly all sector collective bargaining agreements in Luxembourg that have been declared to be generally required provide for the payment of a sum of money at the end of the year, in addition to the monthly salary. The name of this allowance varies:

- "Gratuity/bonus known as the 13th month" for security and custodial staff as well as for permanent employees of temporary employment firms;
- "13th month allowance" for the banking and insurance sectors;
- "End-of-year bonus" for the construction industry, sanitation or heating installers, carpenters or roofing trades;
- "End-of-year allowance" for employees of pharmacies;
- "End-of-year premium" for electricians [collective bargaining agreement concluded in German].



If the employer has concluded a company collective bargaining agreement that provides for the granting of an end-of-year bonus, he obviously has to comply with the terms thereof as of the time the agreement was signed.

II. Granting of end-of-year bonus by company regulations or individual agreement

In the absence of an applicable collective bargaining agreement, the entitlement to an end-of-year bonus may be expressly provided in the company regulations or the personal contract of employment. It is therefore advised to set out therein all the conditions and procedures for granting said bonus. Otherwise, the employee will be deemed to be entitled, under any circumstances, to a prorated bonus according to his performance for the year (whether he resigns or is made redundant, even for serious fault, without condition of seniority, etc.).

If a collective agreement already exists but the company regulations or individual agreement define the rules for granting the premium, the latter will enter into force only if they contain more advantageous provisions for the employee.

III. Granting of an end-of-year bonus by virtue of an established custom

If there is no collective bargaining agreement at sector or company level, and the company regulations or individual contract provide nothing on the matter, it is nonetheless possible that an end-of-year bonus will be due based on an established custom or vested right. Three conditions must then be met concurrently so that an established custom is recognised in the company or that the employee can avail himself of a vested right:

- **Permanence:** The benefit must have been granted for a sufficiently long period, which is a point of fact;
- **Fixed basis:** The basis used to calculate the benefit must be constant;
- **General nature:** The benefit must be granted to all employees of the same category.

It is advised to provide, as of the first payment, a clause to the effect that the bonus is a gratuity and does not bind the employer for the future. It will not, however, prevent the establishment of a custom, if the conditions mentioned above are met.

The information published in this article is valid only on the date of publication of said article. As social legislation is frequently amended, please contact us concerning any question or intended use based on this article or a previously published article.

Pursuant to Article 2, §2 of the Act of 10 August 1991, as the Legal Department of SECUREX Luxembourg SA is not authorised to practice law, it shall limit its action at all times to disseminating information and documentation.

Such documentation and information thus provided under the legal subscription always constitute typical examples or summaries, are of indicative value, and lay no claim to being exhaustive. The addressee is solely responsible for the use and interpretation of the information or documentation referred to in this article, advice or acts he deduces as well as the results he obtains from them.