

Employee Incentives

Many companies include employee incentives in calculating the total amount of wages. In fact, it depends.

I. Characteristics of Bonuses in the Wage System

Calculation Rules for Wages: Whether bonuses are included when calculating wages (Article 476 of Regulations of the Ministry of Labor, Jan 22, 2002)

- Bonuses included as wages

In cases where payment conditions, amounts, and payment rates are regulated in the Rules of employment, or where employees are paid habitually and naturally expect to get paid: regular bonuses, exercise subsidies, etc.

- Bonuses not included as wages

In cases where payment are not paid habitually, but paid temporarily or definitely based on company profits at the employer's discretion: employee incentives, production bonuses, reward bonuses, incentive allowances, etc.

II. Cases where incentive are included when calculating wages

If employee incentives and production promotion bonuses of the same amount are paid periodically and given to all employees pursuant to the collective bargaining agreement, they are characterized as wages (Sep 18, 2003, Seoul Appellate Court ruling 2002 Na 18697).

A company claimed that employee incentives and production promotion bonuses were not calculated as wages because they had been an indefinite valuable paid at the discretion of the employer for the purpose of preventing labor disputes or bringing about early termination of wage negotiations with employees.

However, although there had been slight changes in bonuses since 1996, the above bonuses/benefits had been paid uniformly in regards to payment amount, payment period, etc. It was a burden for the employer to pay employee incentives and production promotion bonuses to all employees uniformly according to the Wage CBA. In terms of formal items such as payment rules, purpose, etc., the payment was also definite and scheduled, so these bonuses were not paid customarily and temporarily. When the above incentives and promotion bonuses are analyzed totally and substantively, they are wages to be regarded as remuneration for work.

III. Cases where incentives are not calculated as wages

Whether profit-sharing bonuses paid on the basis of business performance are considered wages (Feb 28, 2002, wages 68207-134).

According to Article 2 of the Labor Standards Act, the term "wages" means wages, salary, and any other kind of money or valuables (regardless of title), which the employer pays to a worker as remuneration for work. In cases where employee incentives were previously determined in regards to the method of payment, amount, and payment period in the Rules of Employment, the employee incentives were paid customarily to all employees. This repeated payment has made employees expect to receive a bonus. Accordingly, these bonuses shall be regarded as a part of wages.

However, without regulating this working condition, which was previously provided in the Rules of Employment, the company management and labor determined the business target. In the event that the employer makes a decision to pay a fixed amount (e.g., a certain incentive rate or a one-time bonus), then if the target is achieved, such bonuses will not be treated as wages, because what they received is dependent upon the result of business performance. Whether a payment condition is met or not determines the actual payment - the amount being disbursed based on an

evaluation of the company's performance. Therefore, since the reason for the payment is indefinite, temporary, and based on the company's performance, this payment cannot be regarded as part of wages.

The Rules of Employment stipulate "the bonus can be paid in consideration of yearly corporate performance. If business performance is good, as in the case of company profit, the company may, through internal decision-making, determine whether to pay special incentives, the amount and conditions required for payment for each department." Accordingly, this type of profit-sharing bonus is paid according to whether a business surplus is achieved or not. Therefore, in consideration of the payment conditions and purpose, it is difficult to deem this payment as wages according to Article 2 of the Labor Standards Act.

Source: Bong Soo Jung, "Korean Labor Law: Disputes & Resolutions", Joong Ang Economy