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Legal Principles of Employee Compensation and Benefits in Namibia: The Case for Human Resources Divisions

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ABSTRACT

Employee salary, compensation, and other related benefits are key aspects that employees look at before joining an employer. The benefits that an employer can offer employees is not only crucial at the commencement of employment. Compensation and other related benefits play a vital role when employees are making decisions regarding their careers. How much a particular employer pays its employees at a specific job title or grade, whether the position comes with a company car or car allowance, whether the position offers a housing scheme or allowance are amongst the leading factors in determining whether moving from one company to next, or from one job grade to the next is considered. In some instances, though the cost to company may be a lucrative figure in the eyes of the employee, the tangible benefits may not be that grand. In other instances, though cost to company may not be very attractive, the benefits that accompanies the job grade may be attractive. It is thus crucial for employers to package their salary packages in a way so as to attract and retain the right employees.

***Keywords**: Employee Benefits, Employee Compensation, Salaries, Wages, Labour Act 11 of 2007, Namibia.*

I. INTRODUCTION

Salary is the most important aspect for parties to the employment relationship. For an employer there is a constant battle between maximise profits and the need to offer attractive salary packages to their employees. On the other hand, an employee wants to receive maximum salary as possible for the provision of their services to the employer. The question to always ask is 'what is the correct salary package' for a given employee and job grade. This determination is not always easy to make. There are many factors that come into play such as the level of the job grade, the qualifications, skills and experience required for a particular position and the package offered by the competitor. Moreover, it is important to ensure that the countries national law on salary, wages and other benefits are considered when crafting or pitching salary packages

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against the job titles and grades. In Namibia, the Labour Act is the main piece of legislation that governs the employment relationship and all aspects of the employment relationship, including salaries and conditions of employment. Apart from the national legislation, employers must also follow international best practices to inform their salary packages. This will enable employers to remain relevant to the labour market and to attract and retain good quality of employees for the success of the employer.

II. Employee compensation

The compensation plan of the Employer needs to be designed to best fit the particular needs of the firm. Startups can find it difficult to compete with established firms on pay. In order to draw in and keep important personnel, employers had to take a variety of strategies into account. It is recommended for employers to recognize the importance of the benefits or perks that their business provides, which may not be easily found in larger organizations: chances for engaging work, a flat organizational structure, a flexible work environment, and so forth. The drive to stay at the forefront of scientific or technical advancements drives certain individuals. If they think a start-up can succeed and has potential, they might accept a lower salary to work for it.[2] Employers are not committing any legal wrong or breach of contract by failing to provide benefits which the employees are not entitled to by law or a contract of employment. However, if the employer has created a legitimate expectation of providing such a benefit, the employer could be held liable to perform as per the expectation so created.

Any benefit an employee receives from their employer or employment that has no monetary value is considered non-monetary compensation. This comprises social and professional benefits such as opportunity, flexible scheduling, and employment security for development, acclaim and acknowledgment, delight as well as friendships. Correct compensation consists of an employee's base pay, which may be an hourly or annual salary, as well as any performance-based benefits they may be eligible for, including profit-sharing bonuses. There is a lot greater variation in indirect pay.

Health insurance, retirement plans, paid time off, child care, and moving fees are all included, in addition to legally mandated public safety programs like Social Security. All forms of payment have significance. Employers are constrained by both budgetary constraints and their own preconceived notions regarding pay packages, while having a large selection of compensation aspects to choose from. Progressive managers can design pay packages that are

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[2] Employee compensation: Salary, Wages, Incentives and Commissions" Available at https://learn.marsdd.com/article/employee-compensation-salary-wages-incentives-and-commissions/ last accessed on 08 August 2024.

as unique as the employees receiving them by combining a number of these options. Recent research generally agrees that performance-based compensation is the most effective kind. But it's difficult to accomplish that with agricultural work. A manufacturing business might provide a bonus for achieving a performance goal, but there are other uncontrollable elements that impact agricultural success.[3]

A salary, also known as a wage, is a set sum of money given to an employee in return for their labour. According to laws in each province, most workers are entitled to a "minimum wage" in exchange for the labour they perform on behalf of an employer. Salary information for full-time workers is typically expressed in terms of annual, monthly, bi-weekly, or weekly amounts. It is typically expressed as an hourly wage for part-time workers offers.[4]

Bonuses are given to people in accordance with their achievement of performance-based objectives (individual, team, and/or organization). Objectives ought to be reasonable and tightly aligned with the company and individuals involved. The payout potential ought to be high enough to matter to the person. Bonuses can be designed to directly support and drive the needs of the business (profitability, annual results, project completion success, and/or important project milestones, for example).[5]

Above and beyond an employee's base salary, incentive compensation is extra money that is usually received based on performance. It serves as a bonus, giving workers recognition for surpassing sales targets, offering superior customer support, or making a positive impact on the organization's goals. Unlike a fixed base income or perks, incentive pay fluctuates depending on performance, setting it apart from other forms of remuneration. This strategy incentivizes staff members for surpassing targets and reaching predetermined objectives. Incentive compensation has got a number of advantages. Employee motivation is increased by incentive pay, which links rewards to accomplishments or performance. As a result of employees striving to meet or beyond targets in order to receive incentives, job satisfaction and team performance both increase. By recognizing their efforts and reducing attrition, incentive pay helps retain top workers. Incentive payment system may also pose a number of drawbacks. Conflicts and rivalry can arise from incentive compensation, particularly if the criteria and benefits are unclear.

[3] Sarah L. Fogleman and Dean McCorkle Human Resource Management: Employee Compensation Guide available at https://agecoext.tamu.edu/wp-content/uploads/2013/10/rm8-5.pdf Accessed 08 June 2024.

[4] Employee compensation: Salary, Wages, Incentives and Commissions" Available at https://learn.marsdd.com/article/employee-compensation-salary-wages-incentives-and-commissions/ last accessed on 08 August 2024.

[5] Employee compensation: Salary, Wages, Incentives and Commissions" Available at https://learn.marsdd.com/article/employee-compensation-salary-wages-incentives-and-commissions/ last accessed on 08 August 2024.

Introducing incentive pay may be expensive, particularly if there are large or performance-unrelated prizes. Perceptions of unfairness may arise from subjective performance.[6] The bottom line is that the Incentive compensation is essential for inspiring teams and boosting sales output. Employees are encouraged to accomplish or surpass goals since it is frequently linked to particular performance measures, such as sales income, units sold, or client acquisition. This connection with business goals may take the form of commissions, incentives, or awards for both individual and group accomplishments.

Commissions are a typical kind of payment given to staff members (salespeople) for closing deals on goods or services. The idea is to provide the person with a compelling motivation to give their work their all. A proportion of the product or service's sale is typically used to compute commissions (e.g., 5% of the retail selling price of a computer component).

As a form of providing financial benefits to their employees, employers can introduce Employee Share-Ownership Plans (ESOPs). Plans for employee shares have been around since 1956. The first Employee Share Ownership Scheme was established by San Francisco native Luis O. Kelso. "Kelso's employee share-ownership scheme" was established. due to Kelso's conviction that the company's workers are what really made it successful prosperous since they were well-versed in the industry. If workers receive tax breaks to purchase stock in their own business, this may instill a sense of pride in employees and motivate them to strive for enhancing the performance of the business.[7]

The corporate laws of Namibia, i.e the Companies Act prohibits company from providing financial assistance to employees or senior management of the company.[8] However, there is an exception to this general rule. A company will be permitted to provide financial assistance if the provision by a company, is in accordance with any scheme for the time being in force, of money for the subscription for or purchase of shares of the company or its holding company by trustees to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company.[9] The exception that allows employers to introduce a “new” form of payment or compensation for its employees. It must however be noted that this “new” of payment does not replace the traditional forms of payment and must as such be applied in conjunction to the existing forms of payment. In other words, an employer

[6] How Is Incentive Compensation Calculated? Guide and Example available at https://www.salary.com/resources/how-to/how-is-incentive-compensation-calculated-guide-and-example Accessed on 08 August 2024.

[7] Awarab, M “Applying Employee Share-Ownership Schemes as A Transformation Mechanism Aimed at Decreasing Poverty Levels in South Africa: A Comparative Socio-Legal Perspective. LLD Thesis.

[8] Section 44 (1) of the Companies Act 28 of 2004.

[9] Section 44 (2)(b) of the Companies Act 28 of 2004.

who intends to introduce ESOPs must still remunerate his or her employees their normal wages or salaries and in addition thereto subject the employee to benefits accruing from being an employee share-shareholder.

Employer’s give an employee a 13th check as a token of appreciation for a job well done. Therefore, the decision to offer this incentive to employees is still entirely up to the employer. Although, it is a common practice for employers to give a 13th check also known as an annual bonus, the Labour Laws of Namibia does not mandate such Ideally, bonus pay should only be given at the employer’s prerogative and consdering the employee's excellent work, the employer's increased revenue, the employee’s target and quality production, or, in certain cases.

III. Legal principles

Employment relationships are built on trust and the rights of parties. Employees and employers have very specific rights in terms of common law and labour legislation. Balancing these rights is extremely important and pivotal to a fair and successful employment relationship. It must always be remembered that with every right there is an obligation. In other words, the rights of the employee are the obligations of the employer; and the rights of the employer are the obligations of the employee.

Once the employer and the employee conclude a contract of employment, a legal relationship is established. The contract of employment sets out rights and duties of the parties to the employment contract. This rights and duties are to be based on the provisions of the Labour Act 11 of 2007, especially the provisions contained under chapter 3. Chapter 3 of the Labour Act outlines the Basic Conditions of Employment. Amongst the other Basic Conditions of Employment, remuneration is one of the key conditions of employment that an employee is entitled to. According to common law, the validity of an employment contract depends on the employer's express or implicit commitment to compensate its employees. Employees who provide their services must be paid by their employers, even if the employer chooses not to use them for any reason. Subject to the rules of section 26 and the Social Security Act, the Labour Act now specifies how basic wages must be determined and paid, what deductions are allowed, and when an employee may take paid time off from work, such as maternity, sick, annual, or compassionate leave. Employers are entitled to withhold payment or salary or deduct monies from the employees’ salary if the employees fail to fulfil their contractual obligations by rendering services to the employer. The exception is however, that no employer may deduct from the employees’ salary on account of non-performance during the period of the employee’s sick leave, annual leave, or after hours.[10]

Additionally, common law position suggests that an employee who has been suspended pending the disciplinary proceedings is entitled to the payment of his or her full remuneration, until such a time that the disciplinary hearing is concluded[11], even in the event that the employee has requested that a disciplinary hearing to be postponed.[12] In *Norton v Mosenthal & Company*[13] Hutton J held as follows:

"*An examination of the authorities quoted on both sides seem to show that in order to justify a master withholding wages from a servant on the ground of misconduct warranting dismissal, the dismissal must either be in express terms or there must be facts brought to the servant's notice, from which a dismissal may be referred".*

In *Liebrandt v South African Railways*[14]**,** De Wet CJ in quoting with apparent approval the learned Judge in the court a quo who said the following:

"*If there is a suspension, but a suspension not in terms of the statute, the defendant is in the same position that purports to suspend his servant without actually dismissing him. An employer at common law who does this keeps the contract alive and is bound to pay the servant his wages right up to the date of his dismissal just as if the servant had been allowed to do his work".*

In *Myers v SA Railways and Harbours*[15] Solomon JA at p 90 said the following:

"*If however, it was due to his employer that he had been unable to perform his work, then he would be entitled to be paid notwithstanding that no service had been rendered by him".*

In order to legally withhold the payment of remuneration on the basis of suspension, the employer must show any basis in law, why the employee's right to his salary and or benefits should be interfered with.[16]

It essential to establish the applicable hourly, daily, weekly or monthly rate of pay of an employee whose remuneration is based on a different time interval; or who is remunerated on a basis other than time worked.[17]

Furthermore, if an employee is remunerated on a basis other than time worked, that employee

[10] Grogan J, "Employment Rights" 3rd edition, Juta and Co, 100.
[11] *Singh v Rail Commuter Corporation t/a Metrorail* (2007) 28 ILJ 2067 (LC).
[12] *Sappi Forests v CCMA* (2009) 30 ILJ 1140 (LC).
[13] 1920 EDL 115.
[14] 1943 AD 14.
[15] 1924 AD 85.
[16] *Sibande v Department of Labour (Johannesburg Labour Centre) and Others* 28 *ILJ* 2067 (LC).
[17] Section 10 (1) of the Labour Act 11 of 2007, as amended.

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must be considered to be remunerated on a weekly basis, and that employee's weekly remuneration or weekly basic wage must be calculated as follows:

"(a) calculate the total amount of remuneration or basic wage earned by the employee during - (i) the immediately preceding 13 weeks of work; or (ii) if the employee has been in employment for a shorter period, that shorter period of work; and

(b) divide that total by the number of weeks the employee worked to determine the employee's average weekly remuneration or basic wage."[18]

The Labour Act provides an explicit provision as to how and when a payment of remuneration must be effected by the employer. An employer is required to pay an employee any monetary remuneration to which the employee is entitled - (a) not later than one hour after completion of the ordinary hours of work on the normal pay day, which may be daily, weekly, fortnightly or monthly; (b) in cash, or, at the employee's option, by means of a payment instrument, and the payment must be either - (i) to the employee; or (ii) by direct deposit into an account designated in writing by that employee; and (c) in a sealed envelope, if payment is in cash or by a payment instrument, if the instrument is in documentary form.[19]

The above legislative provision is important for two reasons. Firstly, it not only affirms the contractual obligation that the employer has towards the employee, but it clarifies any uncertainties regarding the time frame within which the employer is required to perform towards the employee. Secondly, it not only reaffirms the employee's right to claim remuneration from the employer, but outlines the period when the employee can enforce the right to remuneration. Although the parties are free to agree to different terms in their contract of employment, the terms of the contract must be more onerous than the right to remuneration as contained in the Labour Act.

The fact that the employee's contract of employment terminates before the date of the payment of remuneration does not exonerate the employer from its contractual and statutory obligation to pay the employee remuneration. Hence the employer is still legally required to pay an employee whose contract of employment has terminated before the date for the payment of remuneration. This payment must thus be done in accordance with the law. [20]

Although it is possible for the employer to implement deductions from the employee's remuneration, such deductions must be authorised by law, be in compliance with a court order,

[18] Section 10 (2) of the Labour Act 11 of 2007, as amended.
[19] Section 11 (1) of the Labour Act 11 of 2007, as amended.
[20] Section 11 (2) of the Labour Act 11 of 2007, as amended.

permitted under a collective bargaining agreement or an arbitration award.[21] An employer may consent in writing for deductions from the employee's remuneration for the payment of :

(a) rent in respect of accommodation supplied by the employer;

(b) goods sold by the employer;

(c) a loan advanced by the employer;

(d) contributions to employee benefit funds; or

(e) subscriptions or levies to a registered trade union.

Apart from being lawful, most of the aforementioned deductions are for the employee's benefit and therefore justified.

Moreover, according to Namibian labour law, the equal compensation for equal work premise is essential. Discrimination against workers on the basis of gender, race, or any other protected trait is forbidden for employers. Regardless of their personal characteristics, workers who accomplish the same labor or work of equivalent worth should be paid equally. Employers must therefore act with diligence and pay attention to the existing laws and policies when crafting salary packages, work titles and job grades.

IV. Concluding remarks

The Human Resources Practitioners play a crucial role in ensuring that they employers comply with legislative and common law principles on employee salary and other benefits. Employers should be able to distinguish between compulsory compensation and those benefits that the employees are not entitled to by law, but which the employer decides to provide to their employees. It distinction is crucial because if the employer fails to provide compulsory compensation, he or she could be held liable for breaching not only the contract of employment but the relevant labour legislation. On the other hand, there is no liability for not providing those benefits that are not compulsory under any law. An employer must however, guard against creating a legitimate expectation of providing none compulsory benefits. Providing none compulsory benefits can be a useful tool to attract and retain skilled workers for the overall benefit for the employer.

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[21] Section 12 (1) of the Labour Act 11 of 2007, as amended.

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