

Chapter 7: End of Year Payment

Application

The provisions concerning end of year payment apply to an employee employed under a continuous contract who, in accordance with a term of his contract (including agreement made orally or in writing, in express or implied term), is entitled to an end of year payment from his employer.

Definition

End of year payment means any annual payment (including double pay, 13th month payment, end of year bonus) of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer.

Presumption

For every employment contract made after 27 June 1997, it is presumed that an annual payment or annual bonus is not of a gratuitous nature and is not payable only at the discretion of the employer unless a written term or condition in the contract expresses intention to the contrary.

Eligibility for End of Year Payment

An employee is eligible for an end of year payment if he has been employed under a continuous contract for a whole payment period. The payment period shall be the period specified in the employment contract, or a lunar year if it is not specified.

Amount of End of Year Payment

- The amount as specified in the employment contract.
- If it is not specified, a sum equivalent to the average monthly wages earned by an employee in the 12-month period preceding the day on which it becomes due. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

NOTE: In calculating the average monthly wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness

day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 2 for details)

Proportion of End of Year Payment

An employee is eligible for a pro rata end of year payment if he has been employed under a continuous contract for not less than three months in a payment period and:

- continues to be employed after the expiry of the payment period; or
- is dismissed by the employer (except in cases of summary dismissal due to the employee's serious misconduct).

Any probation period, subject to a maximum of three months, is excluded from the calculation of the qualifying service for pro rata end of year payment. However, excluding the probation period, if an employee has fulfilled the eligibility requirement of the three months' employment in a payment period, then the whole employment period (including the probation period) shall be taken into account in calculating the pro rata end of year payment.

Time of Payment

- On the day specified in the employment contract.
- If a day is not specified, payment should be made on the last day of the payment period or within seven days after that day.
- If the employment contract is terminated before the payment period expires and the employee is eligible for pro rata end of year payment, payment should be made on the day the contract is terminated or within seven days after that day.
- If the end of year payment is to be calculated by reference to any profits of the employer, payment should be made on the day the profits are ascertained or within seven days after that day.

Offences and Penalties

An employer who willfully and without reasonable excuse fails to pay an end of year payment to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000.