

BIBC Practice Note 1_26/02/2024.

Bonus Contributions Refund for Misconduct

Effective Date: 01 March 2024

Purpose

The parties to the BIBC Collective Agreement extended to non-parties on 24 July 2023, agreed that employees who were dismissed for reasons of misconduct would not be eligible for a bonus from the employer who effected the dismissal. This Practice Note stipulates the criteria for ensuring that dismissals are fair, and guides employers on the procedure to follow to apply for a refund of the Bonus Fund contributions for the dismissed employee.

Employers' entitlement to refund

The employer would need to show that a fair process was followed, including a substantively and procedurally fair disciplinary process that led to the dismissal. On presentation of all the required supporting documents and information, the employer will be entitled to this refund with respect to employees dismissed from 01 March 2024. The refund is not available retrospectively.

What is deemed to be a fair dismissal?

A fair disciplinary process is essential to ensure that employees are treated with respect and dignity and is in accordance with the applicable labour law(s). Here are the general principles that constitute a fair dismissal:

Clear and Consistent Policies

Employers should have a standard contract of employment in place with consistent policies and procedures for addressing performance or behaviour issues. These policies should be communicated to all employees and should outline the steps that will be taken in cases of potential dismissal.

Reasonable Opportunity for Improvement

In cases of poor performance or misconduct, employees should be given a reasonable opportunity to improve before dismissal is considered. This may involve setting clear performance goals, providing feedback, offering training, and giving the employee a chance to rectify the issues.

Documentation

Employers should maintain thorough documentation of performance evaluations, warnings, and other relevant communications related to an employee's performance or behaviour. This documentation can serve as evidence of the reasons for dismissal and the steps taken to address the issues.

Right to Respond

Employees should have the right to respond to allegations or performance concerns before a final decision is made. This could involve a meeting where the employee can present their perspective, provide explanations, or offer evidence of improvements.

Impartial Investigation

In cases of alleged misconduct, an impartial investigation should be conducted to gather facts and evidence. This ensures that decisions are based on accurate information rather than assumptions or biases.

Equitable Treatment

Employees should be treated consistently and equitably. Dismissal decisions should not be influenced by discriminatory factors such as race, gender, age, religion, or disability.

Legal Compliance

Employers must adhere to relevant employment laws and regulations when conducting dismissals. This includes considerations for notice periods, severance pay, and any other legal obligations specific to the jurisdiction.

Consultation

In some cases, employers may need to consult with employee representatives or unions before making a dismissal decision. This is particularly relevant in industries where collective agreements are in place.

Appeals Process

Employees should have the right to appeal a dismissal decision if they believe it was unfair or unjustified. An appeals process allows for a review of the decision by a higher authority within the organization.

Remember that labour laws and regulations can vary significantly depending on the jurisdiction and industry. Both employers and employees need to be aware of their rights and responsibilities to ensure that dismissals are handled fairly and legally. If you're facing a specific situation, it's advisable to consult with legal professionals or relevant employment agencies to ensure you are following the appropriate procedures.

Claiming a refund of Bonus contributions

Employers may submit a claim towards an individual member bonus fund if the employer can show and provide the documents and information listed below: -

1. A complete record of the disciplinary proceedings and outcome confirming a dismissal for misconduct. This includes:
 - a) Notification of proceedings or charge sheet issued to the employee.
 - b) A full set of the hearing minutes.
 - c) The outcome of the hearing.
 - d) A copy of the termination notification provided to the employee.

The claim process

2. Upon receipt of the correct information as listed in item 1. above, the BIBC will process the claim when the following conditions have been met:
 - a) The employee has confirmed that he/she will not challenge the outcome of the termination proceedings. In line with the LRA, an employee has the right to challenge the decision within 30 days of the termination.
 - b) The claim must be submitted within 7 days of the dismissal and no later than 31 October. The employer could forfeit this privilege if the claim is out of time as the employee may also claim the funds as an advance due to unemployment.

- c) Claims that meet these minimum requirements will be processed and the Bonus Fund contributions will be refunded to the employer. Alternatively, the employer may direct the BIBC (in writing) to allocate the refund as a credit on that employer's record.
- d) Claims may be addressed to:
 - i. Funds Department
 - ii. FundsDept@bipc.co.za

Regards

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Client Services & Operations Manager

All correspondence to be addressed to the Secretary

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