

**Falling foul** Ensure that bonus agreements are clearly drafted

➔ Pay for staff who do work the extra bank holiday will again depend on their contract, as there is no statutory right to additional pay or time off in lieu. Where organisations have agreed rates for working bank holidays, these should be applied as usual.

➔ **SEE LINKS** ①



IN COURT

## Be clear about bonuses

**Employers need to cater in advance for the twists and turns of incentive schemes, warns Charles Wynn-Evans**

Much bonus case law has involved discretionary schemes, but recent decisions have highlighted issues with specific arrangements too.

In *Khatri*, a trader's discretionary bonus entitlement was replaced by a performance scheme. When the trader was redeployed, his new terms said his bonus would go back to being discretionary. He did not accept the new terms and maintained he was still entitled to the performance bonus scheme.

IMAGE: PA The employer argued it had the right to review or remove the bonus "at any time". The court rejected this argument for two reasons. The ability to review at any



time could only be used prospectively – it could not change the rules for the current bonus year. Also, the employee had not agreed to the discretionary bonus even though he continued in the new job (he had not countersigned the employer's terms letter).

In *Anar*, to aid staff retention, the employer said there would be a guaranteed €400 million bonus pool and that bonuses would be allocated in the usual way.

Revenues fell, and the employer decided to adjust the guaranteed pool. It notified staff when informing them of their bonus awards and reduced bonuses by 90 per cent. When employees challenged this reduction, the court held that the employer's announcement about the bonus pool was not a legally binding commitment. It was relatively informal, did not say who might qualify for a bonus or what kind of sum they might receive. So the employees had no basis for a claim.

In *GX Networks*, the bonus

arrangements gave the employer the discretion to cap performance bonuses at 100 per cent of salary "by exception". The claimant achieved 305 per cent of her sales target, entitling her to a bonus of four and a half times her salary.

The company tried to cap her bonus at 130 per cent. The Court of Appeal held that it could not. An employee outperforming their targets substantially was not exceptional and could not be used to justify capping the reward.

When designing bonus schemes, employers need to:

- be precise about what they commit to, and what has and has not been agreed;
- consider how a profit pool will be calculated and distributed;
- decide whether bonuses can be "clawed back" if necessary;
- establish whether they can terminate or vary the scheme or replace it with a new one.

➔ **SEE LINKS** ②③④⑤

### LINKS & NOTES

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- ③ **Khatri v Cooperative Centrale Raiffeisen-Boerenleenbank** (2010) IRLR 175 (CA) [bit.ly/casekhatri](http://bit.ly/casekhatri)
- ④ **Anar v Dresdner Kleinwort Ltd** (2010) EWHC 1249 (QB) [bit.ly/caseanarv](http://bit.ly/caseanarv)
- ⑤ **GX Networks Ltd v Greenland** (2010) EWCA Civ 784 (CA) [bit.ly/casegxv](http://bit.ly/casegxv)
- ⑥ **PMlaw** Legal checklist Further details at [/case-checklist](http://bit.ly/case-checklist)
- ⑦ **PMlaw** Legal checklist contributors: Roddy Macleod, **Weighmans**: John McMullen, **Short Richardson & Forth**: Kate Asbury, **Dechert**: Phillip Davies, **Eversheds**
- ⑧ **CIPD resources** Employment law qualifications [www.cipd.co.uk/qualifications](http://www.cipd.co.uk/qualifications) A range of updates is available on subscription [www.cipd.co.uk/manuals](http://www.cipd.co.uk/manuals)