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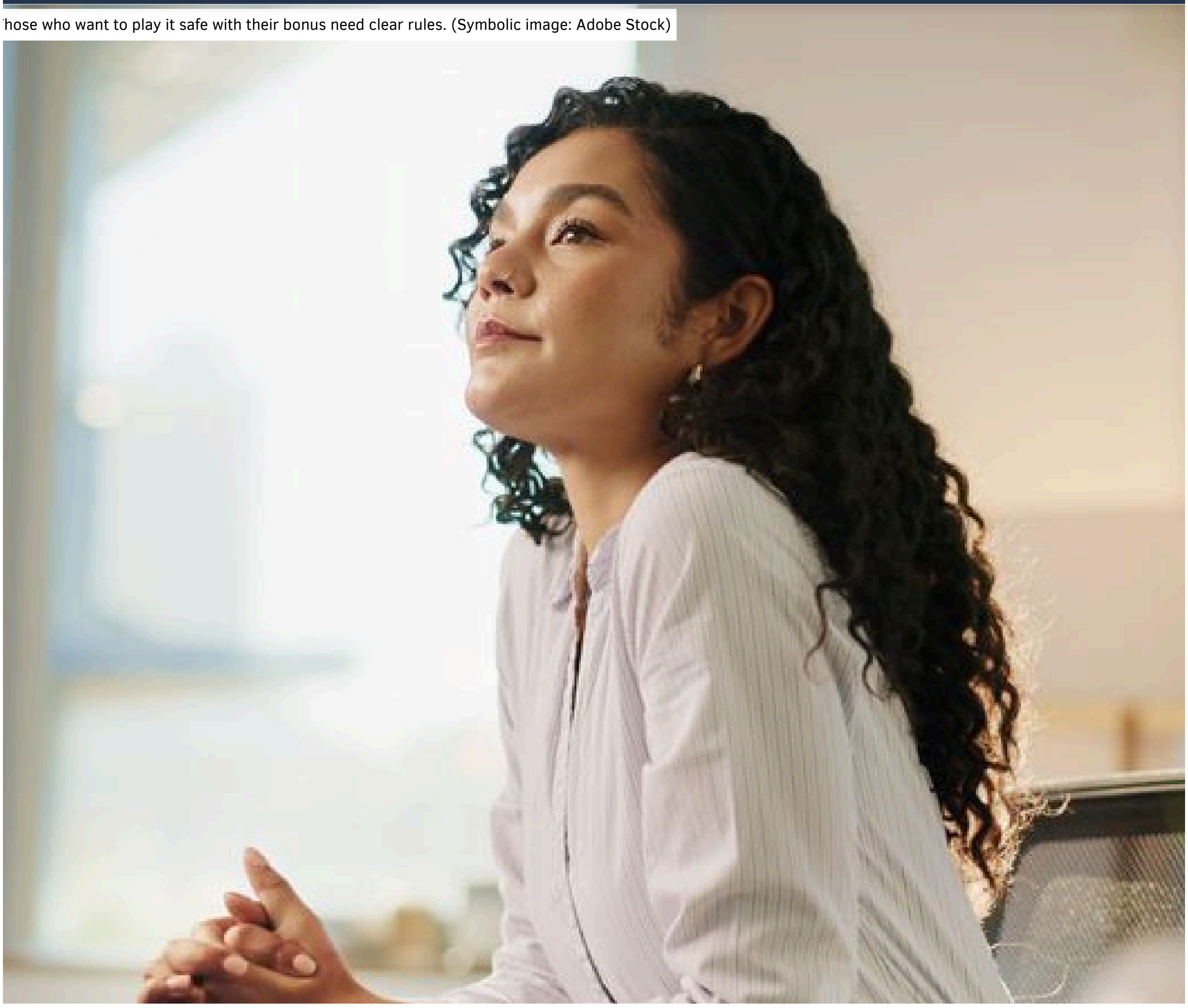
hose who want to play it safe with their bonus need clear rules. (Symbolic image: Adobe Stock)

Right

October 31, 2025 | Andrea Florin

Year-end bonus – what SMEs should consider

The column by the law firm LALIVE in Zurich provides answers to legal questions that Swiss SMEs may or should be concerned about.

As the year draws to a close, the topic of "bonuses" is once again relevant for many SMEs. The law does not define the term "bonus," which is why, depending on the employment contract or the employer's practice, a bonus can be considered either wages or a gratuity. This distinction is important for assessing whether employees are entitled to a bonus.

Gratuities are regulated by law. They represent a special payment for "specific occasions such as Christmas or the end of the fiscal year." However, they are only owed if stipulated in the employment contract; otherwise, a gratuity is voluntary, and employees have no legal entitlement to it. Bonuses are rarely contractually agreed upon, which is why they often represent a voluntary gratuity.

> **To prevent a bonus from becoming a permanent obligation, employers should therefore include an explicit written disclaimer of voluntariness with every payment, such as: "This payment is expressly voluntary and without admission of liability. Even repeated payments do not create any entitlement for the future."**

When a bonus becomes wages

Unlike a bonus, employees always have a legal right to their wages. But when does a bonus become part of their salary? The employment contract is the primary factor here. If it contains a precise calculation formula ("Bonus: ten percent of all revenue generated by the employee"), then it is considered (variable) wages, and the employee is entitled to them.

On the other hand, a bonus can also involuntarily become part of the salary if it carries significant weight relative to the base salary. As a rule of thumb: the lower the base salary, the more likely a bonus is to be of significant weight. The Federal Supreme Court justifies this by stating that the employment relationship is, by definition, remunerated. Accordingly, the remuneration of employees must not depend to a large extent solely on the employer's discretion. This means that a bonus is owed in the future even if it is voluntary according to the employment contract and has previously been paid out with a reservation of rights.

There is no clear definition of when a bonus becomes significant. However, a voluntary bonus of up to one month's salary would likely be insufficient in most cases and therefore would not involuntarily become a fixed salary.

And what about employees whose employment has been terminated?

If an employee is in a terminated employment relationship during the bonus round and the bonus was previously a voluntary payment, the employer is no longer obligated to pay the bonus. This applies regardless of who terminated the employment. If a bonus is stipulated in the employment contract, the employer may reduce it in the event of termination. If the bonus qualifies as a component of wages, it is owed in any case, possibly on a pro rata basis if the employment relationship began during the year.

In addition, employers face other restrictions when selecting who receives a bonus: for example, it is not permissible to award a bonus only to one gender or only to full-time employees. Of course, individual performance can and should be rewarded, which is why differences in bonus amounts between part-time and full-time employees are justified.

Conclusion

Special payments in the form of an end-of-year bonus are a valuable tool for recognizing employee performance and boosting motivation. To prevent bonuses from becoming a legal pitfall, SMEs should avoid including bonus clauses in their employment contracts, refrain from specifying calculation methods for potential bonus payments, avoid paying the same bonus amount every time, and always include a clause reserving the right to make bonus payments voluntary.

Zurich, Geneva, and London on complex, predominantly international matters and, above all, disputes.