

SALARY INCREASES:

DO EMPLOYEES HAVE A RIGHT TO RECEIVE SALARY INCREASES?

Employers are regularly faced with the question whether or not their employees should receive salary increases.

The basic rule is that employees do not have a right to an annual salary increase, unless it is so stipulated in an employee's contract of employment; or determined by a collective agreement between the employer and a trade union; or a bargaining council agreement; or a sectoral determination applicable to the sector within which the employer operates. In the absence of any of these, salary increases remain within management's prerogative. Obviously, if the right to an increase is catered for in any of the aforementioned, the employer cannot unilaterally remove this right and replace it with, e.g., a discretionary annual salary increase or take away the right all together. This would amount to a breach of contract. The employee's agreement would have to be obtained to effect such a change.

However, even if an annual salary increase is not guaranteed, not providing an increase to an employee may still amount to an unfair labour practice. This would be the case, for example, if an employee meets all the requirements of a discretionary increase but the employer, without a valid reason, refuses to increase the employee's salary. The employee who relies on this ground, would need to prove that:

- a. he/she has some entitlement to receiving an increase (e.g. it has become established practice in the company to provide annual increases, or all other employees received one); and
- b. the employer acted unfairly in not increasing the employee's salary (e.g. by deciding arbitrarily not to give the employee an increase).

Even if there is no guarantee of an increase, employers who are running into financial problems, but whose employees might expect an increase, should at least inform the employees of its difficulties and decision not to implement an increase well in advance. Not doing so is harmful to good workplace relations and also opens up the risk of an unfair labour practice complaint.

Unless an employer is contractually or through a collective agreement or sectoral determination bound to give an increase, it is good practice to include a clause in the contracts of new appointees that there is no right to an increase and that the decision whether or not to award an increase falls squarely within management's discretion. At the same time, of course, when awarding increases, employers should be clear about the criteria used to grant them, inform the employees about them and ensure that the criteria are applied fairly and consistently.

Finally, it is important to communicate the basis on which salary increases are awarded to all employees. If the employer has a written policy regarding this, it should make reference to it in any contract of employment and ensure that existing staff, whose contracts might not contain such a clause, are provided with a copy of the policy. Employees should know in advance, what the criteria is for receiving increases, how regularly they are awarded and on what basis they are calculated. This creates certainty and clarity for employees in relation to increases and would result in fewer disputes regarding salary increases. The actual increase received by each individual employee, however, like other information that is personal to an employee, should be kept confidential.

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Author: Elsabé Huysamen