

TERMINATION PAY

In the old days the pay due to employees was easy to calculate, but under the new legislation, introduced in July 2003, it is much more complicated. And if you fail to pay employees' the right amount upon termination, it could cost you a great deal of money in back payments and legal fees.

What is remuneration? And why does this term confuse employers?

Remuneration defined:

“Any payment in money or in kind or both, made or owing to any person in return for that person working for any other person, including the State and ‘remunerate’ has a corresponding meaning.”¹

Remuneration means much more than just the employee's salary. It also includes other payments due to the employee such as commission, certain allowances, and other amounts.

The term 'any payment in money or in kind' is what has caused much confusion over the years. This is the reason that the legislators issued Government Gazette No. 24869 of 23 May 2003. The Gazette distinguishes those items that make up an employee's remuneration for the purposes of calculating payment to be made on termination from those items that must be excluded.

To illustrate by means of examples:

Example 1:

You fire Thulani and want him to leave immediately instead of working his one month's notice. His normal remuneration includes a monthly salary of R8 000.00 plus the private use of a company car valued at R2 000.00 per month. When you calculate the amount you have to pay him in lieu of notice, you must either:

Pay him R10 000.00 being one month's salary of R8 000.00 plus R2 000.00 in lieu of the company car that you take back when he goes; or

Pay him R8 000.00 salary and let him use the company car for a month.

Example 2:

Hannibal assaults a fellow employee who dies. You fined Hannibal guilty at a hearing. Due to the gross nature of the misconduct, you dismiss him summarily. He is paid up to the day of the dismissal and is not entitled to notice pay as he ordinarily would be. You pay him only the value of the leave pay due to him.

¹ Basic Conditions of Employment Act (75/1997)

Example 3:

Johanna, who works a five-day week, leaves your employ after nine months without taking leave. You must pay her as part of the termination pay for 9/12 of 15 days pay (=11.25 days) because she has worked 9 out of 12 months and is entitled to this proportion of the normal three week annual leave.

Remember you must in calculating the Rand value of the leave pay; take into account the employee's full remuneration package.

If Johanna gets a salary plus commission, then you must multiply the 11.25 days due to her by the salary plus the commission due for those days. For instance, if Johanna works 21.67 days in a month, earns an average commission of R3 000.00 per month and her monthly salary is R4 500.00 then your calculation of the outstanding leave pay is R3 000.00 +R4 500.00 = R7 500.00 (Total monthly remuneration) divided by 21.67 (to arrive at one day's pay) = R34.10 per day x 11.25 leave days = R3 893.63 that you must pay her in leave pay on termination.

In terms of the Gazette the average commission would be calculated over a period of 13 weeks "where a payment fluctuates it must be calculated over a period of 13 weeks or if the employee has been in employment for a shorter period, then that period."

This could make a big difference in the figures, and would also apply to regular overtime worked.

Example 4:

Jeremy has resigned and is owed 10 days annual leave. His remuneration per month includes;

Monthly salary	R15 000.00
Average commission R1 600.00 p/w x 4.333	6 933.00
Monthly standby allowance	300.00
Private car allowance	2 300.00
Employers contribution to pension fund	1 250.00
Free accommodation (where rent would normally be R2 200.00 per month)	2 200.00
Total remuneration per month:	R27 983.00

So, for the purposes of calculating Jeremy's leave pay, you cannot use only his R15 000.00 salary. You must use his total remuneration of R27 983.00 as follows:

R27 983.00 divided by 21.67 (average working days in a month) = R1 291.32 per day
 Jeremy's leave pay is therefore R1 291.32 x 10 days = R12 913.20