

LEGAL UPDATE LABOUR AND EMPLOYMENT LAW

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Inflation Relief Bonus: Overview and FAQ

Dr. Alberto Povedano Peramato

Paying inflation relief bonuses remains a burning topic in view of the impending significant rise in energy costs at the turn of the year. Moreover, companies are extremely unsure about the options available to them if they wish to provide financial relief to employees through an inflation relief bonus.

This article gives a brief overview of the scenario and addresses the most important questions relevant in practice.

Overview

The inflation relief bonus is a way for employers to pay their employees a benefit of up to **3,000 euros** which is **not subject to tax and national insurance**. This privilege under tax and national insurance laws is based on [section 3 no. 11c of the German Income Tax Act \(EStG\)](#) and stipulates that the benefit will be granted

- in the **period** between 26 October 2022 and 31 December 2024,
- **in addition to** the remuneration owed and
- is for the purpose of **mitigating** the rise in consumer prices.

The benefit may be in the form of non-monetary compensation or – as is more common – a financial contribution. Furthermore, the employer is free to decide whether to disburse the bonus

as a one-time payment or in multiple instalments.

FAQ

1. Are employees legally entitled to an inflation relief bonus?

No. The statutory provision only provides employers with an **option** to grant their employees a benefit that is free of tax and national insurance. As a rule, employers may or may not grant the benefit at their discretion. They are also free to decide whether the maximum possible amount of 3,000 euros should be paid in instalments or as one lump sum. It is therefore possible that an employer may decide to pay their employees one bonus of 1,500 euros now and the remaining 1,500 euros at a later date (before 31 December 2024).

There is one exception to this: employees may exercise claims in accordance with **the provisions of collective bargaining agreements**, where applicable (for instance, in the [metals and electricals industry in Baden-Württemberg](#)). However, it should be noted that employees are not entitled to any claims on the basis of the actual grant of benefit (more details on this to follow soon).

2. What is the legal basis for granting the bonus?

Provided there are no relevant collective bargaining agreement provisions, it is (nevertheless) recommended to establish an explicit legal basis for granting an inflation relief bonus. It is crucial that the employer clearly and precisely states the **purpose of the benefit**, that is, mitigating increased consumer prices. This can also be done by means of an appropriate note on the remittance slip or in the relevant salary statement.

It is advisable to provide a **corporate legal basis** for the specific arrangements for these bonus payments in view of the co-determination rights of the works council as per section 87 (1) (10) of the German Works Constitution Act (BetrVG). This may be done either by concluding a works agreement or granting the benefit on the basis of an internal agreement. Since an inflation relief bonus will typically be granted at group or company level, it must be ensured that the **responsible works council** (group, central or local works council) is involved.

Should a legal basis under the works constitution no longer apply, there may be an option to agree an **individual contractual provision**. This applies in particular where the inflation relief bonus is not all paid out at once but in multiple instalments over a long period of time. In any case, the employer should make it clear that the bonus is paid **voluntarily and is subject to the employer's discretion**. Furthermore, it may be decided on a case-by-case basis whether the employer can demand that the employee is still employed and notice of termination has not been given on a particular date (cut-off date clause) or agree on repayment mechanisms in specific cases.

3. Can other benefits be offset against any inflation relief bonus paid?

In principle, no, because the inflation relief bonus is to be granted '*in addition to remuneration owed*'. It is only possible to set-off against **purely voluntarily paid special payments**. Whether or not an employee actually has a legal claim to benefits voluntarily granted by an employer – a 'voluntarily paid' Christmas bonus for example – may depend on numerous factors and is therefore difficult to evaluate. Therefore, if the inflation relief bonus is granted in lieu of or is partially offset against other special payments, there is a risk that employees could claim a corresponding additional payment. This requires careful examination whether the special payment being considered for offsetting is indeed of a purely voluntary nature.

4. Can the inflation relief bonus be distributed freely?

Employers have ample room to define the details of distribution and payment subject to the work council's rights of co-determination. The limiting factor, however, is the **principle of equal treatment under employment law**. In the event that an employer does not wish to uniformly distribute an inflation relief bonus among all employees, they must check whether there is an objective, unbiased criterion for any differences.

With this in mind, it is acceptable to determine the amount of the inflation relief bonus in accordance with employees' regular salary, as employees with lower incomes are admittedly more strongly affected by inflation and therefore may be considered for higher bonus amounts. It is likewise **permissible** and advisable to grant **the bonus to part-time employees on a pro-rata basis** based on their individual working hours. On the other hand, completely excluding certain employee groups from the bonus would

be fraught with risks, unless they have been given some (alternative) compensation which helps to equalise the higher consumer prices. In this respect, there is a strong argument in favour of granting an inflation relief bonus solely to non-pay-scale employees if the salaried employees have already received a collectively agreed benefit to help mitigate the effects of inflation. Lastly, keeping in mind the purpose of the inflation relief bonus it will, as a rule, **not be permissible** to grant bonuses **based on merit**.

Conclusion

Employers are not obliged to pay an inflation relief bonus to their employees. Despite the current adversity, if companies do have the financial leeway to pay such a bonus this will be a way to provide tangible and efficient financial relief to employees. Employers must carefully evaluate which arrangements will be most beneficial and find the best possible way to use the existing regulatory options, while respecting any co-determination rights of works councils and mandatory legal provisions.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Alberto Povedano Peramato on +49 221 33660549 or by email to APovedano@goerg.de. For further information about the author visit our website www.goerg.com.

Our Offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Kantstr. 164, 10623 Berlin
Phone +49 30 884503-0
Fax +49 30 882715-0

HAMBURG

Alter Wall 20 - 22, 20457 Hamburg
Phone +49 40 500360-0
Fax +49 40 500360-99

FRANKFURT AM MAIN

Ulmenstr. 30, 60325 Frankfurt am Main
Phone +49 69 170000-17
Fax +49 69 170000-27

COLOGNE

Kennedyplatz 2, 50679 Cologne
Phone +49 221 33660-0
Fax +49 221 33660-80

MUNICH

Prinzregentenstr. 22, 80538 Munich
Phone +49 89 3090667-0
Fax +49 89 3090667-90