

## Associate Bonus When an Associate Leaves to Take Another Position?

"Attorney" has been a productive employee in a small firm for many years. Compensation plan included a generous base salary plus a percentage bonus for all work generated from a satellite office that she started several years ago. Bonus has been paid quarterly and would be due to be paid again on September 30th. Tomorrow is the attorney's last day of employment as she accepted a much higher paying offer from a larger firm in a neighboring town. We will probably lose a significant amount of business that will follow her. When an employee leaves voluntarily, do they lose pending bonus money? Should the full bonus still be paid? Something in between? It was never documented that employee had to remain employed in order to receive bonus. The arrangement was documented in a short email outlining compensation package and simply what I've done for a few years now.

---

Dear Leaving Employee:

This concerns your bonus. This firm's understanding of our agreement is that you have to be employed on the last day of the quarter to be entitled to your quarterly bonus. You are leaving before the end of the quarter. But in order to keep good relations we have decided that we will pay you the quarterly bonus as if you had been so employed. We wish you good luck in your new position. Please keep in touch. We may have work to refer to you and we would be open to receiving referrals from you.

Roger Rosen, California

---

Let me start by saying she is nuts for leaving two weeks before bonus payout. Especially when it's not clearly defined in agreement.

For years my husband has held huge bonus positions. Pretty much every professional decision he makes revolves around his bonus. That blows my mind that someone would cut out two weeks prior.

In the business world, bonuses are normally only received if you are employed at the time they are given out. So, in my husband's case, bonuses are based on the calendar year, January 1 - December 31. However, they are not settled and awarded until March 1st. So not only does he have to work the whole calendar year, but he has to still be working there on March 1 to get the bonus from the previous year. If he works the whole bonus period Jan - Dec, but leaves the job in February, he forfeits the ENTIRE previous years bonus that was fully earned by him.

He has at times been enticed into leaving jobs and forfeiting partial bonuses, but the new employer pays for it in a fat signing bonus to make up for what he walks away from.

That's important to consider and I would ask her if she's getting a signing bonus. If she is, she has likely worked that out with new employer with the expectation that she'll lose some of her bonus with you.

The exact answer is normally defined in your employment agreement. Since your agreement does not specify it will surely be a point of debate.

In your situation this is going to come down to negotiating between the two of you what is fair and reasonable under the circumstances. This opinion is all based on personal experience. I have never litigated this issue. Possibly someone else here has and can give more precise legal advice.

Lani Candelora

---

My five cents:

In addition to the legalities of the situation, please also consider that your firm will continue to be working with the departing attorney in one way or another. I would highly recommend that you pay this attorney what is fair, even if you are not legally obligated to do so.

Val Loumber

---

What state? I can talk about California law.

Mark H. Wagner

---

Val is smart

Roger M. Rosen

---

A bonus is designed to give incentives to remain at work. If you leave, you generally waive the bonus. (Check state law, of course.)

Also, it makes no sense. Why on earth would you pay a bonus to someone who is leaving?

Erik Hammarlund, Massachusetts

---

I think this bonus is based on bringing in work - not a "subjective" bonus based on firm performance / employee retention -- if the leaving attorney brought in work until the time of resignation & this benefitted the firm, I would pay the bonus (or possibly prorated). If you get into a dispute with said attorney, it will cost more to defend and/or burn a bridge. It is also not unusual for attorneys that leave one place, go to a bigger place and hate the culture / demands, and come back -- if you would consider bringing this person back, why burn it over a few dollars (especially since they seemed to be a good attorney).

Regards,

Murtaza Sutarwalla< Texas

---

A bonus may be designed as an incentive to work harder or remain at work.

You asked, "Why on earth would you pay a bonus to someone who is leaving?" Maybe because you appreciated the work that was done. Or because you want your associate to leave with good feelings as opposed to a tale to tell about how you screwed your associate out of an earned bonus by quitting a few days too early. Why burn a bridge that you may need going forward? I'm a big believer in doing the right thing even when it is not required. That position has paid off for me many times over.

Deborah Matthews, Virginia

---

I vote no bonus 😞.

Randy Birch, Utah

---

As I read the question:

- 0) She knows when bonuses get paid.
- 1) She's leaving, and chose her own departure date.
- 2) Her departure will cost the firm a fair amount of money, which she surely knows.
- 3) She has already been fairly paid for the work which she has completed (or will complete) through the departure date.

4) The bonus isn't a wage. Which is to say, if the owner decided not to give it even if the associate stayed, the owner would be in the right (even if the associate would be upset.)

I'm all for bonuses. They are a good way to reward loyal and productive employees. In fact, the delayed payment aspect of a bonus (as opposed to a commission or wage) is often designed to reward loyalty to the employer, since you generally have to be around to get it.

The question then is: Should the owner, who is already losing money and business, be obliged to give extra money to the person who is leaving, and who is directly causing the loss? This is a zero-sum game; either the owner has the money or the ex-employee has the money. And my answer: An employee who leaves, takes clients with them, and who costs you money is, obviously, not "loyal" in the traditional sense of the word. In fact they are technically a direct competitor. If the owner wants to help their direct competitor and their direct competitor's employees, they are welcome to do so, of course, but it's hard to suggest that declining to do so is either "screwing someone out of money they are entitled to" or "not doing the right thing."

In fact, given that this employee is obviously intelligent and competent (they run a satellite office and are moving up, job-wise) it seems at least possible that they deliberately timed their departure so as NOT to get the bonus, perhaps to lessen the considerable impact to their ex-employer.

If the employee demands payment, I'd probably pay it rather than be sued.

If the employee left for some other reason not in the post-illness of a family member, for example--I'd pay it anyway, just to be kind. But if they're smart enough to take business with them, I bet they're smart enough to have taken the "no bonus" into account.

Erik Hammarlund

---

Pay the prorated bonus. This doesn't sound like a bonus anyway, more like a commission based on a percentage of business, calculated quarterly since that happened to be easier for the parties.

If you don't want to pay a future employee a bonus in a similar circumstance, make it clear in the initial compensation memo that if Associate leaves prior to bonus time, they forfeit any pending bonus they would have been entitled to. Of course, you have to make sure your local and state labor laws allow that. As I said, this smells more like a commission than a bonus to me.

Corrine Bielejeski, California

---

I don't see this as a zero-sum game. In the long-term, keeping good relations with the departing employee may be worth paying her something that the employer is not legally bound to pay her. Only the poster can decide if it is worth it, long-term, to pay the departing employee something that the poster does not legally owe. We don't know the community, the personalities, the likelihood of future contacts back and forth, etc. So, even if the consensus that the bonus is not owing is correct [maybe, maybe not], or if the view that a pro-rated amount only may be owing is correct [maybe, maybe not], still, the long-term relationship should be evaluated in making the decision.

Roger Rosen