

Thursday, 22 December 2011

More 'zero bonuses' expected

BANKS

Staff less likely to challenge decision

By Jane Croft,
Law Courts Correspondent

More banks are likely to award a record number of "zero bonuses" this year and run the risk of legal claims, employment lawyers are predicting.

GQ Employment Law says that although banks are well within their rights to pay no bonuses to City of London workers, in the past they have often taken the commercial decision to pay modest bonuses even to mediocre staff partly to avoid legal challenges.

The legal test on whether a bank's discretionary bonus award can be challenged as a breach of contract is whether it was "irrational" and no other reasonable bank would have come to the same decision.

Lawyers point out that

the eurozone crisis and gloomy economic outlook means it has become more difficult for bank employees to succeed in any claim that a bonus is too low by claiming that their employer acted irrationally.

Employment lawyer Ronnie Fox, of Fox solicitors, said he did not expect many forthcoming lawsuits about bonuses.

"Unless a bonus has been promised and there is a breach of that promise, bonuses are discretionary and in order to bring any claim the employee has to prove the bank acted irrationally or perversely," he said.

"It is hard for someone who is not getting a bonus to bring any sort of claim, especially if the underlying business has not performed well," he said.

Paul Quain, partner at GQ Employment Law, said: "This year the banks' legal case will be more watertight than ever due to market conditions and the

fact that even the Bank of England has advised banks to preserve their capital by not paying out bonuses."

He added that in the current environment, bankers were more reluctant to bring bonus-related lawsuits.

Mr Quain added: "Banks have to be very careful when dividing their bonus pools not to spark discrimination claims. They have to have a clear rationale as to why each team member got their level of bonus. If the split even looks like it is based on gender or age, for example, the bank could have to explain its rationale in front of an employment tribunal in a dispute."

Jo Keddie, a partner specialising in employment at Winckworth Sherwood, said: "We have seen a number of senior and middle managers let go in the last three months and I predict we will see more in January and February before bonuses are due."