

## Overview

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Employees do not have a statutory right to participate in benefit plans in the UK, except for a pension plan once the employer has reached its automatic enrolment "staging date". The provision of benefits by employers is thereby largely voluntary, although it is often customary for an employer in certain industry sectors to offer benefits, and most senior employees in all sectors will expect some level of benefits provision.

### Discretionary employment benefits in the UK include:

1. **Bonus and commission schemes**—a bonus may be expressly provided for in the employment contract or in separate documentation, calculated according to a stated formula, or it may be non-contractual and wholly discretionary, paid as and when the employer feels it is merited. In practice, it has become common for employers to give employees a contractual right to participate in a discretionary scheme, with maximum discretion being reserved to the employer over whether a payment is made at all, the amount paid, or the timing and conditions of the payment. The general approach to the exercise of discretion is that it must be exercised honestly and in good faith, for the purposes for which it was conferred, and must not be exercised arbitrarily, capriciously or unreasonably.
2. **Healthcare and wellbeing**—e.g., private medical insurance, life assurance, permanent health insurance, critical illness insurance, gym subsidy or corporate membership, cycle to work scheme, dental and eye care.
3. **Pension**—voluntary contributions by the employers, until mandated when the employer reaches its staging date.
4. **Salary sacrifice**—an arrangement that involves an employee giving up part of his or her entitlement to a salary, which is subject to income tax and national insurance contributions (NICs) in exchange for a new or enhanced non-cash benefit, which is fully or partially exempt from tax and NICs.
5. **Company car and/or fuel allowance.**
6. **Share schemes**—many companies offer some form of share (equity) incentives to their executive directors and employees. A number of regulatory, tax and other issues need to be considered when designing, adopting and launching a share plan.
7. **Family rights**—enhanced maternity and shared parental pay, childcare voucher and workplace nursery schemes.
8. **Enhanced sick pay**—there is no obligation to pay sick pay over and above statutory sick pay (SSP), but many employers do. If an employer chooses to pay contractual sick pay, it can decide how long it wants to pay it for, how it is to be calculated and any conditions attached to payment. For example, some employers only make it available once the employee has passed his or her probationary period (n.b., a probationary

period is typical in a UK employment contract-e.g., six months-but is not required as a matter of law). SSP payments are offset against contractual sick pay (and vice versa).

9. **Enhanced redundancy pay**—similarly, some employers choose to pay redundancy pay over the amount they are required to under statute.

## How Katten can help

We advise on the full range of contentious and non-contentious UK employment law matters – from advising on senior executive employment, to partnership and investment documentation, managing disputes and exits as well as team moves, advising businesses on restructurings involving TUPE, and advising on all the employment issues associated with a corporate transaction or outsourcing, as well as managing the above in an international context.



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