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CAN A CASH ALLOWANCE BE REPLACED WITH AN IN-KIND BENEFIT?

PART 3: IS THE ALTERNATIVE BENEFIT ADEQUATE?

INTRODUCTION

In Parts 1 and 2, we explained that a farmer cannot simply replace a prescribed cash allowance with an in-kind benefit without following the applicable exemption procedure under section 29 of S.I. 41 of 2022. But obtaining an exemption is not the only consideration. The proposed alternative must also be practical, adequate and beneficial to the employee. A farmer should therefore consider the following before proposing an in-kind arrangement.

DOES THE BENEFIT SERVE THE PURPOSE OF THE ALLOWANCE?

The alternative should address the need for which the allowance is provided. For example, if a farmer wishes to replace the light allowance with solar lighting, the system should provide sufficient and reliable lighting for the employee's intended domestic use.

Simply supplying a small solar lamp that cannot adequately light the employee's home may not provide a meaningful alternative to the allowance.

IS THE BENEFIT ADEQUATE AND REASONABLE?

The farmer should consider the quality, capacity, usefulness and value of the proposed benefit. This is guided by section 12A (2) (a) and (b) of the Labour Act. For example, where solar lighting is proposed, relevant considerations include:

- whether the system provides sufficient light for the employee's household needs.
- whether it can operate reliably for the required periods.
- whether its capacity is appropriate for the intended use.
- whether the proposed arrangement places additional costs on the employee that undermine its value.

The assessment should be based on the actual benefit the employee will receive, rather than merely the purchase price of the equipment.

WHO IS RESPONSIBLE FOR MAINTENANCE AND REPLACEMENT?

An in-kind benefit may lose its value if it breaks down or becomes unusable. Before implementing an approved arrangement, the farmer should establish who will be responsible for maintenance, repairs and replacement, and how quickly problems will be addressed.

For example, if a solar system stops working, the employee should not be left without lighting while the farmer continues treating the system as a substitute for the prescribed allowance. These responsibilities should be clearly recorded in the proposed arrangement and addressed in the exemption application where relevant.

WHAT HAPPENS IF THE EMPLOYEE CONSIDERS THE BENEFIT INADEQUATE?

The employee should have an opportunity to raise concerns about the suitability or adequacy of the proposed benefit. Consider a situation in which a farmer supplies solar lamps in place of the light allowance, but the employees reject them because they do not provide sufficient lighting in their view.

The farmer should not simply insist that the lamps are adequate. The parties should discuss the specific shortcomings and consider whether the equipment can be improved or a more suitable alternative provided.

Where the parties cannot agree, the disagreement should be documented and referred to the NEC for guidance or resolution. The employer should not assume that supplying the equipment automatically settles the issue.

Importantly, an employee's rejection of a proposed benefit does not, by itself, cancel the employer's existing CBA obligation. Nor does the employee's acceptance automatically authorise substitution without the necessary exemption.

CONSIDER THE NATURE OF EACH ALLOWANCE

Not all allowances can be assessed in the same way. The proposed alternative must be considered in light of the purpose and requirements of the particular allowance.

For example:

- **Light allowance:** Solar lighting may be proposed, but its capacity, reliability and maintenance must be considered.
- **Transport allowance:** Employer-provided transport should be assessed against the employee's actual transport needs, including the required route, availability and reliability.
- **Fuel allowance:** Where firewood is proposed as an alternative, the employer should consider whether sufficient firewood is available, whether it can be collected or delivered reliably, and the practical burden placed on the employee.
- **Accommodation-related allowance:** Employer-provided accommodation must be assessed against the applicable CBA requirements and the actual accommodation provided.

These examples are not automatic permissions to substitute the allowances. The applicable CBA provisions and the exemption requirements must still be observed.

CONCLUSION

An in-kind benefit should be a genuine, practical and adequate alternative, not merely something the employer considers equivalent to cash. Farmers should assess the proposed benefit carefully, discuss it with affected employees, document the arrangement and follow the exemption procedure under section 29 of S.I. 41 of 2022 before implementing a substitution. Until the necessary exemption has been granted, the employer remains bound by the applicable CBA allowance provision.

Coming in Part 4: *We will bring the series together in a practical checklist of what farmers should do before proposing and implementing an in-kind benefit in place of a prescribed cash allowance.*

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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