

Employee savings: your allocation decisions must be made in writing and within the required timeframe

Some employees will soon be asked to submit their compulsory and discretionary profit-sharing decisions. However, it is important to remember that they must comply with the required timeframe and format. If they do not, the account keeper is legally bound to apply the default allocation. That is exactly what happened to Ms X as illustrated in this month's case.

Moreover, employees will have to be particularly careful in 2016 as the default choice for discretionary profit-sharing will now be an investment in assets subject to lock-up and not a payment into their bank account.

The facts

In April 2014, Ms X received a form called the "option form" asking her to choose, for the discretionary and compulsory profit-sharing bonuses to which she was entitled, between a payment into her bank account or an investment in an employee savings plan.

Ms X called her employee-savings account keeper and asked her contact there to pay out her bonuses. She simultaneously mailed in her option form.

In June 2014, Ms X received a transaction notice. She saw that her discretionary profit-sharing had indeed been paid but her compulsory profit-sharing had been invested, contrary to her instructions. She then filed a complaint with her account-keeping institution, which told her that it had applied the default choice to her discretionary and compulsory profit-sharing.

Ms X did not understand this response as she had sent her account keeper the option form within the specified time and had given her instructions by phone prior to sending the form by mail.

She asked me to intervene and requested payment of her compulsory profit-sharing.

The analysis

I questioned Ms X's account keeper, which had not responded favourably to her request.

This institution informed me that it had received a blank option form and was therefore required to apply the default allocation, that is, the plan and the fund provided for in the company's collective agreement.

This institution also sent me a recording of the phone call with Ms X. I listened to this conversation and noted that Ms X had been informed that, to request payment of her compulsory and discretionary profit-sharing, she had to send the completed option form and indicate "*in the grey box that all funds are to be paid into the bank account*".

I looked over Ms X's option form and saw that the document had not been completed and that it clearly stated that the default choice would automatically be applied to blank forms.

Lastly, I observed that the collective agreement in force in 2014 provided that, when savers do not make a choice, their compulsory profit-sharing bonus is automatically invested and their discretionary profit-sharing bonus is paid out.

The recommendation

Based on the evidence in this case, my view was that, first, the account keeper had complied with the legal provisions and those in the agreement when it paid out Ms X's discretionary profit-sharing and invested her compulsory profit-sharing and, second, that it had clearly informed the employee of the conditions applicable to allocation decisions on the option form and that these conditions were reiterated during the phone call.

I therefore had no reason to call Ms X's account keeper's analysis into question and my opinion was consequently not in Ms X's favour.

The lesson to be learned

You need to be careful and make your choices in writing, either by mailing in your properly completed option form or by filling it out online in the customised section on your account keeper's website.

If employees do not make their choice in the required timeframe and format, the default choice will be applied.

Please note that the regulations governing the default allocation of discretionary profit-sharing changed in 2016. If savers do not send their allocation decisions in writing within the required timeframe, their discretionary profit-sharing bonus will now automatically be invested in their employee savings plan and no longer paid into their bank account.

To avoid any frustration, lawmakers¹ provided for a right of withdrawal, as a transitional measure (for bonuses paid between 1 January 2016 and 31 December 2017), to give employees access to their discretionary profit-sharing allocated by default to the savings plan, within three months of being notified of this default allocation. They will be reimbursed based on the first net asset value applicable following the date on which the request was received².

However, this withdrawal does have an impact on the employee as it may be subject to charges by the account-keeping institution and to market fluctuations.

Read more
[The AMF Ombudsman](#)

¹ Article 150 of the Macron Act

² Inter-ministerial directive of 18 February 2016 on the Macron Act