

REVIEW



Employee training costs – reimbursed on departure?



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Introduction

Welcome to our electronic news review published by M&P Legal. We hope that the publication is of interest to recipients. Please contact any of the individuals listed on the contact us page with comments for future articles.



Advocate John Aycok analyses ...

... a recent case from the Island's Employment Tribunal which gives some guidance on when an employer can claw back training expenses from an employee who leaves.

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Employee training costs – reimbursed on departure?

Employers often get frustrated when an employee in whom they have invested training time, cost and effort decides to leave for pastures new.

Provided an employee gives proper notice to terminate under the contract of employment, the employee is normally fully entitled to bring an end to the contract and work elsewhere. In some cases, the employee may have to consider express restrictive covenants in the contract which might affect to what extent that employee can work in the same industry and/or make contact with previous business associates. But expertise gained from training stays with that employee and helps him/her build experience.

In respect of the cost of training an employee who then decides to leave, however, the Isle of Man Employment Tribunal has recently given its views on a contractual arrangement which provided for claw back of training costs on an employee's departure. Contracts of employment often do include such a claw back provision which might for instance be restricted to recuperating the training costs incurred by the company during a fixed period prior to the end of the employment contract. Alternatively, the obligation to repay training expenses might only kick in if the employee leaves before the end of a fixed period.

In the recent Tribunal ruling, the contract provided that if the employee terminated the employment in certain circumstances

then he may be required to repay the cost of training expenses on a pro-rata basis including course fees, accommodation and other expenses. The contract therefore made it clear that the claw back provision applied if the employee terminated the employment but it was silent as to what happened if the employer terminated the contract.

In the circumstances of the case (which involved specialist aviation training), the Tribunal considered that it would be equally fair and reasonable for the employer to recover such training costs if, by reason of his poor conduct, the employee had been lawfully dismissed by the company. In those circumstances, the Tribunal felt that if an employer had been forced to dismiss the employee then the employee has the benefit of the training incurred at the expense of the employer but there is no ongoing benefit to the employer.

In the case in question therefore the Tribunal implied a term into the contract such that if the employee was lawfully dismissed for poor conduct (and therefore not unfairly dismissed) an amount owing by the employee in respect of training costs should be repaid. The training cost claw back which would be triggered if the employee left of his own free will was therefore effectively engaged as applicable even though he had been dismissed.

This is an interesting analysis of what can be a complicated situation. Each case

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will depend on its merits. The recent case involved very specialist pilot training. The wording of contracts is often not entirely clear and can be muddled by staff handbooks and correspondence updates sometimes not being entirely consistent with the basic contract of employment. Past practice can also be material, for instance whether in practice an employer historically enforces claw back entitlements.

The key for employers as always is to ensure a comprehensive and clear contract of employment and to act with consistency in accordance with clear provisions. Within that contract there should be a clear provision as to what happens on termination (by either party) in connection with training costs that may have been incurred for that employee. This way, both parties will know exactly where they stand and any reimbursement of training costs can be dealt with transparently as part of the final pay packet assessment.

In this regard, it is also important that the contract contains suitable employee consent to such deduction given that the Employment Act 2006 makes it unlawful for an employer to deduct from salary without the consent of an employee.

Provided the contract paperwork is clear and the employer's custom and practice is consistent then the training costs claw back should not be a nasty surprise at the end of a contract. Moreover, it can be handled in a businesslike manner as part of overall

termination arrangements. The Tribunal's recent ruling, however, has provided some useful guidance as to what can happen in cases where specialist training has been funded but the obligations of the various parties on termination are not entirely clear.

John Aycock is Joint Managing Director of M&P Legal Advocates, Solicitors and Attorneys and head of the firm's employment team



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