

## **Repayment of training costs clause**

### **Background**

The training and development of employees is recognised as an important part of any workforce. This standard clause provides for the employee to repay the costs associated with attending training courses that the employer has paid for if the employee ceases employment within a certain period of time. The clause assumes that the employer does not have a separate repayment of training costs policy. It is intended to be included in a contract of employment and is drafted on the basis that the employer is a company. If you wish to include it in a contract of employment for an existing employee you should check the existing terms to see how variations to contracts of employment can be agreed or follow your company policy in this regard. An employment contract is a legally binding agreement between employer and employee and therefore subject to the basic principle that one party cannot unilaterally alter the terms of contract without the other party's consent.

### **Legal considerations when using such clauses**

#### **The rule against penalty clauses**

The clause contains a repayment provision if the employee leaves employment within a certain time frame after being booked on, or attending, a training course. Occasionally, an employee will argue that this type of clause is a penalty and therefore unenforceable. However, a clause of this nature will only be construed as a penalty if it imposes a detriment on the employee and this is out of all proportion to the interest which the employer is trying to protect. If the clause is proportionate, a genuine pre-estimate of loss and reasonable taking account industry norms there is less chance of it being unenforceable.

#### **Restraint of trade**

An obligation to repay training costs may have the effect of discouraging an employee to leave, and so be an indirect restraint of trade. This has not been fully tested in the courts so ensuring the clause is proportionate remains a key principle.

#### **Sliding scale of repayments**

The clause provides for the rate of the repayment to be on a sliding scale according to when the employee ceases their employment. This is to reflect the fact that the longer the employee remains with the employer, the more benefit it receives from the employee's attendance on the training course.

The amount of the repayment and its corresponding timescale will be relevant to determining whether the clause is a penalty clause. Employers should avoid making the repayment period too long as it may indirectly discriminate against employees on grounds of age, sex or disability. This is because it is arguable that female, older or disabled workers are often less able than others to remain in continuous employment for prolonged periods of time.

#### **No repayment required**

Clause 1.3 sets out the circumstances where the repayment obligation will not apply. Employers could broaden the circumstances in which the costs will be repaid by requiring the employee to make the repayment where the employer has dismissed them for any reason. Since there is no case law on an express term of this nature, it is unclear how broadening these circumstances might affect the unfairness or validity of the clause.

## **Deduction from wages**

Clause 1.4 is intended to provide the employer with the necessary contractual authority so that any deduction is not viewed as an unlawful deduction of wages. An employer who is seeking to rely on a repayment clause should require employees to sign a deduction consent form, or include a deduction from earnings clause in the employment contract.

## **Tax**

Work-related training costs paid by the employer are a tax-free benefit for an employee. Employers should seek tax advice if they provide loans to employees for training, as different rules apply to loans provided to employees.

***Each case will turn on its own facts. The circumstances of the termination of employment together with the amounts repayable by the employee will be relevant to determining if such a clause is challengeable by an employee.***

## **Sample clause**

**The terminology used in this clause will need to be adjusted to match the relevant contract of employment.**

**It is recommended you seek your own legal advice on the incorporation of this clause into your contracts of employment given the legal issues raised above.**

### **1. REPAYMENT OF TRAINING COSTS**

1.1 From time to time the Company may pay for you to attend training courses. In consideration of this, you agree that if your employment terminates after the Company has incurred liability for the cost of you doing so you will be liable to repay some or all of the fees, expenses and other costs (the Costs) associated with such training courses in accordance with *Clause 1.2*.

1.2 Except in the circumstances set out in *Clause 1.3*, you shall repay the Company as follows:

(a) if you cease employment before you attend the training course but the Company has already incurred liability for the Costs, [100]% of the Costs or such proportion of the Costs that the Company cannot recover from the course provider shall be repaid;

(b) if you cease employment during the training course or within [xx months] of completing the training course, [100]% of the Costs shall be repaid;

(c) if you cease employment more than [xx months but no more than xx months] after completion of the training course, [50]% of the Costs shall be repaid;

(d) if you cease employment more than [xx months but no more than xx months] after completion of the training course, [25]% of the Costs shall be repaid.

Thereafter, no repayment shall be required.

1.3 You shall not be required to repay any of the costs under this *Clause 1* in either of the following circumstances:

(a) the Company terminates your employment, except where:

(i) it was entitled to and did terminate your employment summarily; or

(ii) it terminated your employment pursuant to an application by you for voluntary redundancy;

(b) you terminate your employment in response to a fundamental breach by the Company.

1.4 You agree to the Company deducting the sums under this clause from your final salary or any outstanding payments due to you.

1.5 You agree that if the Company waives your obligation to repay the Costs under this clause, you will be solely responsible for any income or other tax payable as a result of the waiver and you shall indemnify the Company on a continuing basis in relation to any such tax.

## Other practical aspects:

In addition to including a clause in the contract of employment, it will also be advisable to capture the practical information around the nature and purpose of the training so the clause above has a practical context.

Consider recording the following details on the employee record and employer training file:

Name of Employer	
Name of Employee	
Course Title	
Course dates (Commencement and expected end dates)	
Course fees and other costs Eg: <ul style="list-style-type: none"><li>• Course Fees</li><li>• Travel to training sessions</li><li>• Professional Membership</li><li>• Examination Fees</li><li>• Books and Materials</li></ul>	
Outcomes It is useful to be clear on the expected outcomes for: <ul style="list-style-type: none"><li>• Individual employee</li><li>• Client Group that the employee cares for</li><li>• Care setting, consider the financial benefits, improvement in working practices and skills attitudes and behaviour modelling for the workforce</li></ul>	

Employee signature	
Date	
Employer signature (eg: line manager; learning and development manager)	
Date	

Discussion and record of the above will help the employee to understand the importance of the investment that is being made in them and that this is being done to help them follow their career pathway and also help the care setting ensure they are able to deliver the best possible care for their clients.

As the employee starts on the learning programme decide how you may like to debrief them to capture their new knowledge and consider whether what they are learning can help you, as the manager, to review the ways things are done in your care setting and transfer knowledge to others. By doing this you will benefit straight away from your investment and you can plan your repayment terms on a sliding scale that is proportionate with the amount invested and the return received.