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Training costs: can a municipality require reimbursement when an employee resigns?

Municipalities need to invest significant amounts in staff training in order to meet their many legal requirements and obligations.

For example, any municipal employee who operates the municipality's drinking water facilities must have a certificate in basic drinking water catchment and systems.

Given the significant costs that this can represent, many municipalities have wondered whether they can include a clause in an employment contract that requires employees to reimburse them for training costs if they resign early.

In short, it depends. The courts have repeatedly found this type of clause to be valid, but they have also set parameters to ensure that the requirement remains reasonable for the employee.

Validity of the training reimbursement clause

Section 85.2 of the *Act respecting labour standards*¹ (ALS) states that "[a]n employer is required to reimburse an employee for reasonable expenses incurred where, at the request of the employer, the employee must travel or undergo training."

However, there are certain exceptions, particularly when the training is a prerequisite for hiring and constitutes an asset that could be brought to another organization.² In these cases, employers can, in principle, validly include a clause in their employment contracts to require an employee to repay costs related to the training under certain conditions.³

Typically, training reimbursement clauses require the employee to stay with the employer for a certain amount of time. If the employee resigns within that period, the employer may require them to partially or fully reimburse the training costs.

That being said, case law has established certain rules that the clause must obey in order to be valid. In particular:

- i. The clause should be in writing and written in clear terms. It is more difficult to prove the existence, and therefore the validity, of verbal agreements.

- ii. The obligation to repay must be proportional; in other words, the employer must not derive any undue benefit from it. This means that the repayment terms and the duration of the clause need to be reasonable. As such, the repayment may need to be reduced proportionally to the amount of time that the employer has benefited from the employee's work.⁴ Factors such as the actual cost of the training for the employer, the employee's annual salary, and the employee's benefits from the training may also be considered when determining whether a training reimbursement clause is abusive or, in some cases, whether the employee should be required to repay less than anticipated.⁵
- iii. The reimbursement clause must apply to training that constitutes an exportable asset for the employee; in other words, the employee must derive personal benefit from the training insofar as they can use their knowledge with another organization.
- iv. In principle, the employee should only be required to reimburse the training costs if they resign voluntarily or are dismissed for just and sufficient cause. If the employer unilaterally decides to end the employment relationship without just and sufficient cause, the clause may be null and void.

Conclusions

Municipalities could benefit from including a clause requiring employees to reimburse mandatory training for a position if that training constitutes an exportable asset.

That said, given the complexity of drafting this type of clause, and the risk of potentially violating section 85.2 of the ALS, it is best to consult a lawyer during the process.

¹ CQLR, c. N-1.1

² CQLR, c. N-1.1, s. 85.1, para. 3: *Créances garanties du Canada ltée v Commission des normes du travail*, 2008 QCCA 1428

³ See in particular *Pascan Aviation Inc. v Di Marzio*, 2009 QCCS 4; *Investissements Nolinor Inc. v Paquet*, 2020 QCCQ 3083; *AirSprint Inc. v Stirrup*, 2024 QCCQ 6020

⁴ CQLR, c. CCQ-1991, ss. 1437 and 1623; *Chrono Aviation inc. v Waterhouse*, 2017 QCCQ 13851

⁵ *Investissements Nolinor Inc. v AirSprint Inc.*