

### Unconditional reimbursement obligation for education and training costs

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There is a huge practical need for the valid financial involvement of the employee in paying for education and training costs incurred by the employer in the event that the employee leaves the company before the end of a certain commitment period. After all, training costs often amount to thousands of euros. Understandably the employer has an interest in ensuring that such an investment made in an employee will bring a return. The legal technicality of implementing such education and training agreements, in particular the permitted extent of cost sharing by the employee, poses great challenges for employers. Encouragingly the Federal Labour Court (Bundesarbeitsgericht, BAG) (BAG 25 January 2022 – 9 AZR 144/21) has recently emphasised that even unconditional cost sharing by an employee in their education and training costs is fundamentally valid.

#### Dominance of conditional obligation to pay back education and training costs

In the past, repayment clauses for education and training costs in employment contracts have been dominant. These make cost sharing by the employee in their education and training costs conditional on the employee remaining with the company. On the basis of a conditional obligation the employee must repay part of the fees paid by the employer for education and training if the employee leaves the company before the end of the commitment period stated in the Education and Training Agreement. Ultimately employees can only essentially avoid the reimbursement obligation through their continued loyalty to the company. Such clauses are regularly the subject of disputes in employment case law. In the meantime this has evolved into an almost incomprehensible case history. The validity requirements of such Education and Training Agreements have been increasingly refined and progressively tightened in relation to commitment periods, reimbursement reasons and cost transparency.

#### Unconditional reimbursement obligation for education and training costs

Until now unconditional reimbursement obligations have existed in the shadows. These do not give the employee the opportunity to escape the reimbursement obligation through their loyalty to the company. Rather the reimbursement terms are already fixed from the conclusion of the Education and Training Agreement. With this variant the employee is not subject to any commitment to stay with the company for a specific period of time. How long the employee remains with the employer is irrelevant with regards to the reimbursement obligation.

#### Decision of the BAG

The BAG has recently ruled on such unconditional reimbursement agreements for education and training costs. This judgment stated that agreements where the employee must contribute to the costs of the employer financing their education are as a general rule permissible and do not disproportionately disadvantage the employee. This applies in particular to clauses which involve the employee unconditionally sharing the cost and do not allow the employee to pay the employer back through their loyalty to the company. In this respect the BAG recognises the employer's legitimate interest in reducing its expenditure exceeding the exchange of performance and consideration. The BAG appropriately found that such clauses do not represent any impermissible restriction on the constitutionally protected choice of employment (Art. 12 (1) sentence 1 German Basic Law (Grundgesetz, GG) but rather is subject to the contractual freedom between employee and employer.

#### Validity requirements

Employee and employer are however not completely free to enter into an unconditional reimbursement agreement regarding education and training costs. The BAG highlighted that unconditional cost sharing is only valid to the extent that the employee has obtained a non-cash benefit through taking part in the education and training measures

that they can also exploit outside of the employment relationship.

The greater the professional advantage associated with the education and/or training they receive, the more reasonable it is to expect them to share the costs. This is to be considered in particular in situations where the employee can also utilise the acquired knowledge and skills outside of their workplace, for example because a qualification recognised in practice offers opportunities for professional advancement. On the other hand, cost sharing by the employee is usually excluded if the education or training is only useful internally, is merely refreshing existing knowledge or adapting this knowledge to new business requirements instigated by the employer.

## Conclusion

After the decision of the BAG employers now have further possibilities to involve employees in paying for the costs of their education and training. However, great care is required with the design of the agreement and the individual circumstances must be adequately taken into consideration by both sides when drafting the Education and Training Agreement. Even small errors can regularly lead to the invalidity of the entire Education and Training Agreement resulting in the employer being left responsible for all the education and training costs in the end.

## Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr Franz Hürdler, LL.M. on +49 30 884503 - 122 or by email to [fhuedler@goerg.de](mailto:fhuedler@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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