

# Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:  
March 2022

Training expenses to be claimed back from an employee

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## → Recovery of training expenses from the employee

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Employers usually appreciate employees' initiative to improve their qualification or gain additional education. Often employers cover employee expenses for training which is not directly related to the job performed by the employee. When the employment legal relationship with the relevant employee is terminated, sometimes employers find out that they have invested substantial resources in the employee training and would like to know if such resources can be claimed back from the employee. Several of below listed aspects need to be considered and assessed in order to answer this question.

### Type of training

According to the Labour Law there are two types of training:

- professional training and qualification improvement needed for further performance of the official duties undertaken by the employee. For example, a sales representative is sent for training about new products, so that he/ she knows particular products and can sell them. Or, for example, an employee is sent for training to improve the knowledge of a foreign language used by the employee for performing official duties. This type of training is related to performance of the employee's official duties and its expenses should be covered by the employer. Expenses for this type of training cannot be claimed back from the employee;
- professional training or qualification improvement which is related to the job performed by the employee according to circumstances, however, this professional training or qualification improvement is not decisive for performing the contracted job (hereinafter referred to as non-mandatory training). For example, a sales manager has decided to complete the Master's degree in economics. This training will improve the sales manager's qualification, however, it is not decisive for being able to perform daily work. The employer and the employee may sign a written agreement regarding such training and provide that the employee will be obliged to return a part of the tuition fee paid by the employer if the employee terminates the employment legal relationship or the employer terminates the employment legal relationship due to any breaches committed by the employee within the term defined by the agreement.

### Presence of a written agreement

A written agreement between the employee and the employer is the precondition to enable the

employer to claim back the tuition fee for the employee's non-mandatory training. The Labour Law prescribes the minimum provisions which have to be included in the above agreement on repayment of the tuition fee. In particular, the agreement should contain the following:

- the agreement term;
- the maximum amount of the employer's expenses related to professional training or qualification improvement;
- the detailed description of the professional training or qualification improvement;
- the procedure according to which the employer's expenses related to professional training or qualification improvement should be covered.

The Labour Law additionally specifies the criteria to be met for the employer and the employee to be able to sign the agreement on repayment of the fee for non-mandatory training. First, the employee needs to agree to participate in training. A mutual agreement is signed by and between the parties, and in this case the employer's unilateral order for sending the employee to training is not permissible. Second, the validity term of the agreement should be reasonable.

The Labour Law also defines the cases when the agreement on repayment of the fees of non-mandatory training is not in force. These are cases when such an agreement has been signed:

- with a minor person;
- with a person whose legal capacity is restricted due to mental or other health issues;
- during the probation period or
- for professional training or qualification upgrade that the employer is required to provide under laws and regulations.

## Amount to be claimed back

The Labour Law provides that maximum 70 per cent of the fee of non-mandatory training paid by the employer may be claimed back from the employee. Moreover, the amount is reduced proportionally every day the employee has worked [for the employer] after receiving the training certificate.

The Law also stipulates the minimum amount which cannot be claimed back by the employer from the employee. If the total expenses for non-mandatory training during a year do not exceed the minimum wage set in the country, the employer does not have the right to claim reimbursement of such expenses, except if the employee terminated employment legal relationship or it was terminated due to a breach during the training process, i.e. until the moment when he/she received the diploma (or another document certifying the qualification).

If the total expenses for non-mandatory training during a year do not exceed the minimum wage set in the country, the employer has the right to claim reimbursement of the part of the expenses above the minimum wage set in the country from the employee.

## Grounds for claiming the expenses back

Two situations should be distinguished when the paid tuition fees are claimed back. In particular, whether reimbursement is claimed during the period when the training is continued or it is claimed following completion of the training.

The employer may request the employee to reimburse all the expenses for the training which the employer cannot recover from this training provider during the period when non-mandatory training is performed, if:

- the employee terminates the employment contract;
- the employee has committed an illegal act and cannot continue training due to this reason;
- by his behaviour or action the employer has contributed to termination of the employment legal relationship and the employer has terminated

the employment contract due to the breach committed by the employee.

After the end of such training the employer has the right to claim back the resources invested in education or training from the employee according to the procedure defined by the written agreement, if:

- the employment relationship is terminated according to the employee's initiative prior to the term defined by the agreement;
- the employer terminates the employment relationship due to a substantial breach committed by the employee;
- the employee could not complete the training program due to illegal action or to pass the training test.

It should be added that the employee's refusal to attend non-mandatory training which is not decisive for further performance of the official duties undertaken by the employee cannot serve as the grounds for terminating the employment contract or restricting other rights of the employee. Moreover, it is not important at which moment the employee presents the rejection, in particular, whether it is prior to, after or during signing of the agreement on payment for the non-mandatory training.

## Employee's liabilities towards the employer

When the employer pays for the employee's training, he is usually interested that the employee continues working in the company. Accordingly, the Labour Law allows the parties to agree in writing on the term how long the employee should work for the employer following completion of the particular qualification.

The maximum permissible term which the employee should work for the employer following completion of non-mandatory training is 2 years. However, this term should be proportionate to the resources used for the training. Therefore, it should be evaluated in each particular case whether the obligation to work for the employer for a particular term is proportionate to the employer's contribution to paying the training fee.

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