

HRD Liability Update

Courtesy of Sample & Associates



Publisher: John Sample, Ph.D.
November – December 2005
Phone/Fax (850)- 443-5429
E-mail: sampleassociates@comcast.net

Please route to:
___ President/CEO
___ VP/Dir HRD
___ VP/Dir HRM
___ _____

An I.O.U for Training

By John Sample, Ph.D. SPHR

We all know how expensive training can be. We do it because we consider it an investment in an organization's workforce. But what happens when an employee leaves before the organization can reap the benefits of that training?

The costs of such a loss can extend far beyond the investment of time and money in the training itself. For instance, if the departing employee then puts the training to work for a competing company, it's the competitor who gets the return on the training investment--without incurring the cost.

To avoid that kind of loss, some employers institute policies that call for noncompetition agreements or paybacks for the expense of training. One company solved the problem by having a new employee sign a promissory note. A resulting court case, *Booth v. Electronic Data Systems Corporation* (1992), illustrates the workings of such an agreement.

A Contract To Repay

The business required a newly hired computer analyst to agree to reimburse it for the cost of training if he stayed with the company less than three years. The employee signed a promissory note; the business agreed to forgive the note after three years if the analyst was still an employee there. But if he quit or was fired during that period, he would have to pay back at least part of the \$9000.

The analyst was an "at will" employee, so the business could fire him at any time for any reason. During the three-year period, the company fired him for allegedly filing false expense reimbursement requests.

The terminated employee responded by filing a wrongful-discharge suit. And the employer countered with a suit of its own, seeking the \$9,000 in training expenses.

The Court Rules

A federal district court dismissed the wrongful-termination suit and ordered the former employee to pay the business the \$9,000. The court reasoned that the company did not promise to employ the analyst for any specified period of time. The employee received valuable training, the court said. And the employee had promised to repay the costs of that training under the terms agreed to in a promissory note.

In other words, the court concluded that the agreement to repay the employer for training costs was a binding contract.

A Double Message

This may be one of those cases in which the employer's cost of defending the suit may have exceeded the \$9,000 recovered. But the employers continuing use of similar agreements for recouping training costs sends new employees two messages:

- The business cares enough to invest in training that will help employees develop skills and perform successfully on the job.
- Employees should think twice about incentives from other employers to "jump ship" before the terms of the training contract expire.

There is a downside to requiring employees to agree to repay training costs. Unfortunately, such agreements may scare off talented applicants, who might choose to go elsewhere for less risky employment opportunities. Human resource managers should weigh the positive and negative aspects of such agreements. And they should rely on competent legal counsel in drafting the promissory notes.

This article originally appeared in the In Practice section of *Training and Development*, 1995, 49(110, 11).

HRD Liability Update is provided free as a professional development service from Sample & Associates. It is provided with the understanding that the publisher is not engaged in rendering legal advice. If legal assistance is required, seek the services of competent legal counsel. Permission is granted for the recipient to copy or forward this HRD Liability Update by e-mail or via the Internet to parties interested in liability as it impacts human resource management, development, training, and education.