

# 10 pitfalls when granting costly trainings to employees in Germany

Employee retention and training employees to cope with the rapidly changing work environment is becoming increasingly important for companies across the globe. Within their employment relationships, employees in Germany enjoy a broad variety of possibilities and corporate benefits and are eager to develop and advance their careers. Such incentives are advantageous for both, the company and the employees and often ensure a long term-retention of employees. In the following, we have listed ten pitfalls and concepts that clients should have in mind when implementing and granting costly trainings to employees in Germany.

## 1 Appropriate agreement in place

Employee training can quickly become very costly and extend over a long period of time. The parties should draft an appropriate agreement which entails at least each of the following elements: Term, costs, milestones, possible repayment events and modalities and whether training is conducted during working hours or time off.

## 2 Retention period

Every employer will have a great interest of avoiding newly trained employees leaving the company after or even before having completed their training. Hence, the agreement should also provide for a retention period. The duration of such is subject to the costs of the training and individual for each case.

## 3 Repayment clause

As an additional safeguard, it is advisable to include a repayment clause in the agreement in order to secure that the employer is able to reclaim the costs paid for the training, in the event that an employee leaves the company within the retention period or even during the training. Such clause has to be diligently drafted and should, in any case, be in line with the frequently changing German case law.

## 4 Cases for repayment

It should be noted, that repayment cannot be contractually agreed for in every case in which an employee leaves the company. German case law sets strict limits in this respect, whereby the reason and the trigger for the employee's exit are always decisive. Repayment is possible, if the employer ordinarily or extraordinarily terminates the employment relationship for reasons of conduct on the part of the employee or any termination of the employment relationship by the employee, provided that such termination is not based on reasons in the responsibility of the employer. It is important define the reasons and trigger events as concise as possible.

## 5 Time of conclusion of agreement

German case law generally requires that the parties conclude the agreement prior the start of the training. The rationale is that the employee is fully aware of any of the underlying contractual obligations and any cases which would trigger a repayment event. For example, an agreement concluded six months after the start of training was declared invalid by a German court.

## 6 Tax implication

Generally, training costs for a practised profession are deductible as incomerelated expenses to an unlimited extent, whereas costs of vocational training are only deductible as special expenses and only up to a certain limit. The assumption of professional training costs that are not in the predominant interest of the employer constitute a taxable noncash benefit in kind.

## 7 Burden of proof

If a repayment claim is disputed in court, the employer bears the burden of proof and has to set out and prove the factual preconditions of the legal validity of the repayment clause as well as the facts evidencing that the employee has gained the necessary professional advantage as a result of the further training initially paid for by the employer.

## 8 Educational leave

In 14 of the 16 German federal states, there is the concept of so-called educational leave, according to which employees are currently entitled to five days of educational leave per year (or ten days at a time within two years). The educational leave is to be granted in addition to and independently of the regular leave entitlement, so that is not offset against the regular leave.

## 9 Detailed costs

Besides the expected costs for training and any materials, further costs and expenses may arise for travel to the respective training location and possible accommodation. The potential assumption of costs at a certain amount should be discussed and decided by the parties in advance and clearly regulated in the training agreement.

## 10 Check current legislative ideas

German legislators are currently discussing whether employees should be granted a right to participate in training measures and whether there are any further options to support employees financially during such trainings. If implemented, this would result in employees receiving payments from the state instead of the employer, making it easier to finance these efforts.

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