

Member's Quarterly

Spring 2023 Edition

Feature

Invest in Retention, not Resignation

Keep your Training and Development Agreements enforceable

As of March 2023, Alberta's unemployment rate was reported at 6%, compared with 11.90% in September 2020. Accordingly, employers in Alberta are working with a tight labour market. Faced with labour shortages spanning multiple industries, employers must explore incentives that will attract and retain their workforce. Ideally, such incentives would not only benefit the employee, but also bring long-term value to the employer.

One incentive is to subsidize employee training and development opportunities that are relevant to the employer's business.

Training and Development as a Tool for Recruitment and Retention

In addition to a competitive salary and benefits package, employees value learning opportunities to enrich their skills repertoire and advance their career. As such, offering subsidized training and development opportunities would give an employer a competitive advantage over other employers vying for the same talent pool.

Employees with access to appropriate training and development programs ("TDPs") are also likely to deliver long-term benefits to the employer. Not only will these employees be more productive in their roles, but overall employee morale is likely to improve when employees feel equipped for success and confident in what they are doing. This latter benefit in turn reduces employee burnout, absenteeism and turnover.

To maximize the long-term value of subsidized TDPs, an employer may consider conducting a comprehensive survey to gauge employees' professional interests as well as any skill gaps that management identifies. Regular performance reviews with a career development plan component also assist in gathering the required information to tailor and prioritize TDPs for employee retention.

The Value of Training and Development Agreements

But what if an employer incurs thousands of dollars' worth of training and development expenses, only for the employee to leave for other employment a short while later? Where several employees choose to "enrich and ditch", an employer could suffer significant financial losses as it would need to recruit and retrain replacement employees.

To protect its investment in employee training and development, the most efficient solution would be to have employees sign a Training and Development Agreement (a "TDA") prior to authorizing any employer-paid courses. A TDA is a written contract between the employer and an employee that sets out the conditions of any TDPs that the employer subsidizes.

Important clauses to include in a TDA include:

- The types of TDPs authorized and/or criteria for which certain courses, conferences or workshops would be eligible for financial assistance;
- The maximum limits for employer financial assistance;
- Any time off work to be granted for training and whether such time off would be with or without pay;



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- The need for prior authorization in writing from appropriate supervisors;
- What happens if the employee fails to successfully complete a TDP; and
- The employee's obligations to diligently pursue training and to repay TDP costs upon resignation or termination for just cause.

Ensuring Enforceability of Repayment Clauses

Although it would be open to an employer to recover TDP costs through a civil claim, the resources to do so often exceed the cost of the TDPs subsidized. It is therefore preferable to deduct TDP amounts from the employee's last pay cheque as enabled by section 12(c) of Alberta's *Employment Standards Code*. Specifically, section 12(c) permits an employer to deduct from the earnings of an employee a sum of money that is personally authorized in writing by the employee.

While an employer may be tempted to include a catchall clause stating that an employee must repay "all debts owing" to the employer upon resignation or termination for just cause, the same is insufficient to satisfy the written authorization requirement in section 12(c). Instead, the deduction of TDP amounts must be drafted in clear and specific terms about what is to be repaid, when it is to be repaid, and how it is to be repaid.

Further, the repayment amount must be reasonable and proportionate to the loss suffered by the employer. Otherwise stated, the repayment amount must not be a "penalty" designed to punish an employee for leaving their employment. If a repayment amount is deemed a penalty, the repayment clause will be unenforceable.

One option to ensure that the repayment amount is not viewed as a penalty is to utilize a sliding scale model in the TDA: the longer that an employee has remained with an employer following the completion of a course or workshop, the less that employee must repay at resignation or termination for just cause. This is because the longer that the employee stays following the completion of a TDP, the more likely it is for the employer to have extracted value from that TDP.

A well-designed employee TDP, coupled with adequate protection from a TDA, can not only overcome challenges associated with the current tight labour market but also bring substantial long-term dividends for employers in any labour climate. Why not invest in retention?

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