

LEGAL REGULATIONS ON AGREEMENT ON WORK COMMITMENT PERIOD AFTER TRAINING , VOCATIONAL TRAINING COSTS AND THE PRACTICE OF COURT TRIAL

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Abstract: From the perspective of comparing the legal provisions on vocational training contracts and the reality of resolving arising disputes such as working time and training costs in order to highlight the rights and obligations of the parties. in the issue of concluding and implementing vocational training contracts. From there, we provide comments on the direction of resolving disputes over the legal rights and interests of the parties before the Court.

Keywords: *agree; commit; work; training, costs of vocational studying; judge*

1. Question

Fostering and training to improve the qualifications of employees is one of the activities considered by law to be an obligation of the employer. Moreover, in the era of international integration, the application of scientific and technical measures and changes in business methods have become more popular and are carried out regularly in the majority of businesses. However, the issue of vocational training or specifically the vocational training contract is agreed upon based on the legal rights and interests between the employer and employee. Accordingly, employers want to meet human resource standards to meet business innovation and increase economic efficiency in production activities. Employees' goals are to foster and improve their own skills and expertise, seek advancement opportunities, and avoid being eliminated from the labor market. Therefore, when entering into a vocational training contract, the law has regulations on the content agreed in the contract to eliminate risks leading to disputes. However, in reality, the agreement on benefits in vocational training contracts and the legal responsibilities the parties must bear in case of violations still have many inappropriate points, causing difficulties in the process of proving and resolving disputes. Dispute case on compensation and reimbursement of vocational training costs. Within the scope of the article, the author focuses on analyzing legal regulations on vocational training, comparing them with the reality of trials in court, thereby making comments aimed at protecting the rights and interests of workers. parties in vocational training contracts.

2. Legal regulations on vocational training contracts

According to Vietnamese labor law, this vocational training must be agreed upon by the employee (employee) and the employer (employer), and documented in the form of a vocational training contract (HĐĐTĐN).). Clause 2, Article 62 of the 2019 Labor Code (2019 Labor Code) stipulates that the employment contract must have main contents such as: (i) training occupation; (ii) location, time and salary during the training period; (iii) commitment period to work after training; (iv) training costs and responsibility to reimburse training costs; (v) responsibilities of employers; and (v) responsibilities of employees

In particular, vocational training costs are an important issue in the agreement between the parties and must be clearly and specifically stipulated in the Employment Contract to serve as a basis for requiring employees to reimburse an amount of money when violating their obligations. this agreement. Vocational training costs include fees for valid documents on necessary expenses as prescribed in Clause 3, Article 62 of the 2019 Labor Code, specifically such as expenses paid to

instructors, learning materials, schools, classes, etc. Machines, equipment, practice materials and other costs to support learners; salary; social insurance premiums; Health insurance, unemployment insurance, travel expenses, living expenses. The law does not regulate the amount of money and the length of time workers must work after receiving vocational training. However, the parties must have an agreement in the contract, although it depends on the will and wishes of the parties. . If the employer does not sign the contents according to Clause 2, Article 62 of the 2019 Labor Code , it will be subject to administrative penalties as prescribed in Clause 1, Article 14 of Decree No. 12/2022/ND-CP dated December 17. January 2022 of the Government

Employees are liable to compensate employers for vocational training costs in the following cases:

First, the employee terminates the labor contract (labor contract) in accordance with the law . Although the labor law does not stipulate the obligations of employees in this case, according to the provisions of Article 61 of the Law on Vocational Education 2014, employees after completing the vocational training course must work for the employer according to the law. the time limit committed in the Employment Contract. In case the employee fails to comply with this commitment, the training cost must be reimbursed. Thus, the employee is still responsible for compensating training costs to the employer for violating the obligation regarding the working term after completing the course.

Second, the employee terminates the labor contract illegally. If the termination of the labor contract does not fall into the cases where the employee has the right to unilaterally terminate the labor contract according to the law, it is determined to be an illegal act of unilateral termination of the labor contract. Accordingly, employees must perform the obligations prescribed in Article 40 of the Labor Code towards the Employer from the time the above event occurs: i) Compensate the employer for half a month's salary under the labor contract and an amount corresponding to the salary under the labor contract for days without prior notice; ii) Reimburse the employer for training costs based on the Employment Contract signed by the parties; iii) Not receiving severance pay.

From the above regulations, employees are obliged to compensate all vocational training costs to employers when violating vocational training agreements. If the employer wants the employee to pay him/her a sum of money in addition to compensating for vocational training costs, the parties must have an agreement on the penalty clause in the employment contract. Only then will the employer have the right to request the employee to pay a fine for failing to comply with the commitments in the Employment Contract.

3. The reality of the Court's trial on resolving disputes regarding reimbursement of vocational training costs

When requesting a competent court to resolve a dispute over compensation for training costs when an employee fails to comply with the commitment regarding working time after completing the training course, employers should note that the agencies conducting the prosecution The court will reassess the amount of money that the employer requires the employee to reimburse. Accordingly, determining the reasonable level of compensation must be based on the validity of the agreement on vocational training in the labor contract or unemployment contract or other written agreement between the employee and the employer to clarify the following details. : i) Is there actual training that gives rise to liability for compensation of training costs for employees?; ii) Compensation for damages must be based on the actual training time compared with the training time in the agreement, the committed time to work after training and the actual working time; iii) Training costs and items in the agreement and in reality,

However, in reality, agreement on the period of commitment to work after training, the training costs and the responsibility to reimburse training costs are not the only basis for the Court to resolve disputes on training cost reimbursement cases. For example, in Judgment No. 04/2022/LD-PT dated April 22, 2014 of the People's Court of Phu Yen province resolving disputes over requests for reimbursement of training costs, bonuses and compensation for damages caused by breach of commitment:

On March 10, 2016, K Industrial Limited Liability Company (referred to as the Company) recruited and signed a labor contract to recruit Mr. Dang Truong A to work at the company for a period of 3 years. ***On March 26, 2016, the Company and Mr. A signed a post-training commitment, however the commitment did not clearly state the training time or training cost.***

After that, Mr. A was sent for training to receive the certificate of Operation Manager specialized in cogeneration electricity. The company sent Mr. A to participate in 02 special training and testing courses organized by the National Power System Dispatch Center, from March 29, 2016 to March 31, 2016 and from October 10, 2016. /2016 to October 13, 2016. In addition, Mr. A also participated in the centralized theoretical training process organized by the Company from June 2016 to November 2017. On January 2, 2019, Mr. A signed an addendum to the 2019 labor contract to continue working until January 21, 2019. Mr. A received an internal bonus and committed to continue working for 1 year from January 1, 2019. 2019, if you quit your job, you must return your bonus.

On March 1, 2019, Mr. A voluntarily quit his job without notifying the Company. The company repeatedly notified and explained that Mr. A should return to work, otherwise he would have to refund training costs and other expenses due to violation of commitment, but Mr. A did not cooperate.

Accordingly, the Court commented as follows:

After studying the documentary evidence available in the case file and examined at the trial; Based on the results of the debate at the trial and the opinions of the litigants, the Prosecutor and the Trial Council commented:

A voluntarily signs a training commitment with the company, committing to long-term service of at least 5 years, performing work according to the company's assignment and mobilization. If the defendant does not comply with the commitment, he/she must reimburse the Company for all training costs, wages, salary increases, and other allowances during the intensive training period as well as the time away from work. job at the Company. On March 1, 2019, the defendant quit his job because he violated his commitment, so he was responsible for repaying the training costs to the Company according to the signed commitment.

For salaries (from March 2016 to February 2017): Based on the company's Plan No. 313/KH-HRD dated March 31, 2016, for a period of 1 year from April 1, 2016 to April 31, 2016. March 2017, Mr. A participated in practical training for the leader of the biomass power plant operation shift, practical training at K biomass power plant along with the training program. Based on the confirmation of salary paid by company K to Mr. 000 VND during the internal training period according to the post-training commitment made on March 26, 2016 stating "If I do not comply with the commitments, I will take full responsibility and reimburse as required." of the company regarding the entire cost of the training process including salary, salary increase, other allowances (if any) during the period of intensive training and time not working at the unit." . Therefore, it is necessary to accept the plaintiff's appeal request forcing the defendant to refund the salary of 43,964,000 VND.

As for other items, the plaintiff withdrew his request and did not appeal, the jury did not consider it and upheld the decision of the first instance court.

	<i>Request of the litigant</i>	<i>Court of first instance</i>	<i>Court of Appeals</i>
<p><i>At the PT court: The plaintiff appealed the entire first instance judgment requesting to accept the plaintiff's entire request to force the defendant to compensate the total training costs of 144,189,351 VND.</i></p> <p><i>The plaintiff appealed additionally requesting the defendant to refund the salary and teacher's salary paid by KCP with a total amount of 74,538,196 VND, and maintain the other contents of the judgment.</i></p>			
Plaintiff	<p>The company sued to request the Court to force Mr. A to refund all training costs and other expenses due to breach of commitment in the amount of 270,267,351 VND.</p>	<ol style="list-style-type: none"> 1. Force the defendant to repay K Industry Limited Liability Company the total amount of 57,697,648 VND including training costs, salaries and special bonuses in 2018. 2. Do not accept part of the plaintiff's request for reimbursement of training costs and salaries with a total amount of 73,528,579 VND. 3. Partial suspension of the plaintiff's lawsuit request with a total amount of 139,041,124 VND. 	<ol style="list-style-type: none"> 1. Partially accept the plaintiff's request according to the petition dated October 22, 2020. Force the defendant to repay the plaintiff the amount of 100,652,031 VND (One hundred million, six hundred fifty-two thousand and thirty-one dong) for training costs and salaries. 2. Do not accept part of the plaintiff's request for reimbursement of training costs and salaries with a total amount of 30,574,196 VND. 3. Partial suspension of the plaintiff's lawsuit request with a total amount of 139,041,124 VND.

Accordingly, between the company and Mr. A there is no specific agreement on training costs. However, based on the evidence that the company presented in court, it is legal and authentic. Therefore, the Court decided to partially accept the plaintiff's request, forcing the defendant to refund the plaintiff the amount of 100,652,031 VND (One hundred million, six hundred fifty-two thousand, thirty-one dong) for expenses. training and salary.

In addition, in judgment No. 01/2017/LD-ST dated September 7, 2017 of the People's Court of Hung Ha district, Thai Binh province on the Dispute over vocational training, specifically: The plaintiff is Company H. Hung Ha District People's Court forced the defendant, Ms. Th, to reimburse Company H for vocational training costs of 209,997,076 VND, 35,000,000 VND has been refunded, and 174,997,076 VND must be returned. From the content of the judgment, it can be seen that the reality of the Court's adjudication of disputes regarding reimbursement of vocational training costs depends greatly on the proof and presentation of evidence before the specific Court. Accordingly, the Judgment may partly contain the following content:

Regarding the training costs of 177,408,000 VND, through reviewing the documentary evidence presented by Company H, the Court found that: Among the 08 vocational training costs

mentioned by Company H, There are 07 expenses that have contracts with the training recipient, the Wuhan Iron and Steel Quality Testing Center, China, or have complete invoices and documents, while the tuition expense is more than the other 07 expenses combined and according to In the "Appendix - List of training courses at Wuhan Iron and Steel Company" presented by Company H, there are 74 people sent for training (Ms. Th at serial number 28), so the total tuition fee is very large but Company H cannot present any contract or invoice or document regarding the payment of the above amount.

Company H provided evidence on page 5 of the "Scope of work" section of the "Construction Contract Letter" No. S3LXZA02 (photocopy) dated May 16, 2013 between Company H and Phuong Nam Company of China. (PNTQ Company) has regulations that PNTQ Company is responsible for training technical and professional knowledge for FHS employees. Through review, on page 5, the "Scope of work" section of the "Construction Contract Letter" No. S3LXZA02 has the content *"...minimize problems that arise when performing work, and at the same time rely on the relationship close relationship between the design company and the construction steel workshop, with comprehensive technical consulting services provided by the steel workshop, ensuring content, product quality and design integrity, and at the same time being Chemical testing staff assist in training, commissioning and establishing normative operations..."*. Thus, the above content is only general and does not specifically state how much vocational training costs; Which party must bear it? vocational training place; Training time...

On the other hand, looking at the content of the "Construction Contract Letter" No. S3LXZA02 (photocopy) presented by Company H when filing a lawsuit (shown in notes 151 to 158), on page No. 5/14 only shows the words China, there is no translation into Vietnamese like other sites, but in the "Construction Contract Letter" No. S3LXZA02 (photocopy) presented by Company H on August 2, 2017 and the copy presented at the trial, on the 5th page but does not show the page number below the page like other pages and has a translation into Vietnamese under the Chinese section, so there is no consistency in the same type of evidence provided by Company H. provide.

According to the "Construction Contract Letter" No. S3LXZA02, the total value of the contract is 101,611,811,685 VND, exchange rate 1 USD = 20,833 VND, but the document "On confirmation of Ms. Do Thi Th's tuition fee" dated August 11, 2017 of PNTQ Company, Company H paid Ms. Th's tuition fee of 140 USD/day x 60 days = 8,400 USD = 177,408,000 VND, according to the exchange rate on May 9, 2014. of Vietcombank: 1 USD = 21,120 VND. Thus, there is a contradiction in the evidence presented by Company H.

On that basis, the Court did not accept Company H's request to reimburse the training cost of 177,408,000 VND, because the evidence provided by Company H was sufficient basis to prove the request. of the company

4. Conclusion

From the above analysis, it can be seen that the law stipulates that the parties must agree on: (i) training profession; (ii) location, time and salary during the training period; (iii) commitment period to work after training; (iv) training costs and responsibility to reimburse training costs; (v) responsibilities of employers; and (v) responsibilities of employees. However, the trial court still has to verify issues such as: Is there really any training in reality that gives rise to the responsibility to compensate the employee for training costs?; Compensation must be based on the actual training time compared with the training time in the agreement, the committed time to work after training and the actual working time; Training costs and items in the agreement and in reality allow the Court to decide on the most reasonable level of reimbursement for training costs.

From the above analysis, it is found that in case there is an agreement on the commitment of the learner regarding the term of working for the enterprise, the employee must be responsible for repaying vocational training costs when violating the commitment under Article 61 of the Law on Vocational Education 2014 or unilaterally terminating the labor contract illegally (K3, Article 40 of the Labor Code 2019); If there is no agreement on the employee's commitment regarding the term of working for the enterprise, the obligation to reimburse training costs will arise when the employee unilaterally terminates the labor contract illegally (K3, Article 40 of the 2019 Labor Code).

Regarding the issue of compensation for vocational training costs, from the actual content of the above judgments, it can be seen that the acceptance and non-acceptance of requests for reimbursement of training costs are considered by the Court from the Evidence such as documents, invoices, tuition confirmation, etc. that the requesting party provides to determine the compensation level is not entirely based on the agreement of the parties. Therefore, presenting evidence to prove the request for reimbursement of vocational training costs before the Court is very important as one of the bases for the Court to make a decision.

5. References

1. Vietnam Labor Code 2019
2. Vietnam Vocational Education Law 2014
3. Decree No. 12/2022/ND-CP regulating penalties for administrative violations in the fields of labor, social insurance, and Vietnamese workers working abroad under contracts
4. Judgment No. 04/2022/LD-PT dated April 22, 2014 of the People's Court of Phu Yen province resolves disputes over requests for reimbursement of training costs, bonuses and compensation for damages due to violation of commitments
5. Judgment No. 01/2017/LD-ST dated September 7, 2017 of the People's Court of Hung Ha district, Thai Binh province on the Dispute over vocational training