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The Paradox Of Train But Retain: Impact Of TRAs On Employee Mobility

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Employers should test the merit of cost recovery by checking mutual value over straitjacket recoup of costs. Factors like training costs on actuals, tenure, performance, and reasonableness of departure must be considered



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The corporate market is stormed with intense competition. Companies heavily invest in training their workforce to outshine competitors. Yet, as these trained employees become more skilled and employable, a paradox emerges which companies must confront - the exodus of their trained talents in pursuit of "better" opportunities. This exposes employers to not only monetary losses but also project bottlenecks affecting their industry credibility. To avoid such issues, some employers prefer to sign a contract with new employees or employees who are provided expensive trainings for upskilling to ensure recovery of training costs if such employees depart before serving for a minimum retention period. Such contracts are popularly termed as training contracts or bonds.

Employee Training And The 'Training Repayment Agreement Provisions' (TRAPs)

Typically, employers enter into contractual agreements with employees to safeguard their interests in relation to the training imparted to them as part of their employment. These agreements, commonly known as 'Training Repayment Agreements' ("TRA"), stipulate that where employees resign from employment or are terminated for cause, prior to expiry of retention

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period, TRAs provide for repayment of certain training costs to the employer. Alternatively, provisions akin to TRA, 'Training Repayment Agreement Provisions' ("TRAPs"), may also be built in employment contracts itself.

These clawback tools, namely TRAs and TRAPs, represent contemporary approaches to talent development, financial security, and risk management in the present-day business landscape.

Enforceability of TRAPs

Courts in India have taken a nuanced approach vis-a-vis TRAPs and evaluated their validity and enforceability on a case to case basis. Employment 'bonds' have been held to be unreasonable in cases where no actual loss of the employer could be established. Indian courts have typically considered whether the promised training was really provided, whether the recoverable cost is directly attributable to such training and whether such proposed recovery amount reasonably commensurate with the actual training cost. The courts may also weigh fairness by checking whether the training costs were recouped by the employee. On the other hand, in some other cases where contracts contained genuine pre-estimate of damages, employers were not burdened to prove any actual loss. Courts have also held TRAPs to be beneficial as trainings enhance employee acceptability and held that the employees may depart after paying unrecovered costs. Accordingly, employers seeking the repayment of training costs must ensure that such training costs are well documented. The training costs should not be punitive in nature. Employers should also ensure that the damages / amounts claimed by the employer are based on actual losses or quantified cost of training imparted to the employees (and not mere scheduled training).

Impact of TRAPs on Employee Mobility and Job Market Dynamics

TRAPs have undeniably shaped job-market dynamics. It is common for employers to use TRAPs as deterrents in their employment contracts. However, courts may hold TRAPs as unenforceable if employers fail to demonstrate that such costs were reasonably incurred to train the employee.

A significant effect of TRAP for employees has been the comparative disadvantage they face in seeking lucrative lateral hiring opportunities. TRAPs deter employees from seeking greener pastures after upskilling through employer-imparted-trainings. Employees may be required to reveal such contractual restrictions at the time of accepting new job offers or run the risk of losing such offers. Training contracts also deter prospective employers from hiring talented employees bound by such contracts.

On the flipside, employers who strictly enforce TRAPs might find it difficult to attract top talent. Highly skilled individuals may favour employers with more flexible employment terms.

The "Big Quit" trend triggered by the COVID-19 pandemic, saw employees, notably in the IT/ITeS sector, quitting their current jobs en-masse and switching to jobs with better compensation packages and perks, despite these agreements. However, TRAPs related obligations curtail employees' independence/leverage to negotiate competitive compensation packages when seeking new employment. As a result, employees stick to an employer out of obligation causing low productivity, poor mental health and in effect, causing employers to lose revenue and growth, they may have otherwise created.

Delicate Balance

The race to attract top talent and retain trained talent calls for much balancing. Employers imparting curated and expensive training to their employees may prefer to sign training contracts irrespective of their enforceability. Employers often choose to strictly enforce such provisions for employees leaving on bad terms. Employees, who exit owing performance issues or employer's business restructuring may be provided exemption from recovery of training costs if they separate amicably.

Employers should test the merit of cost recovery by checking mutual value over straitjacket recoup of costs. Factors like training costs on actuals, tenure, performance and reasonableness of departure must be considered. Free or subsidized training modules imparted in tranches, in house educators could be explored.

Employee training and skill development is an essential component of creating a skilled workforce but must catalyze mutual growth. While employers' time and cost in training employees is a huge investment, it needs to account for employee welfare. TRAPs must be a reconciliation ground for employer's actual damages and employee's legitimate separation/ resignation. Judicious use of TRAPs would ease employee mobility and their financial burden, which would foster trust and build a productive environment for both employers and employees.

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