

LEGAL UPDATE

First judgement on study cost clause after introduction of Transparent and Predictable Terms of Employment Act

Date: 1 February 2023

Since the introduction of the Transparent and Predictable Terms of Employment Act ('*Wet transparante en voorspelbare arbeidsvoorwaarden*') from 1 August 2022, study cost clauses are null and void if they refer to training that is necessary for the performance of the job. Since then, there have been many questions about when mandatory training is involved. On 10 January 2023, the first judgement ([ECLI:NL:RBMNE:2022:5560](#)) appeared on the validity of a study cost clause after the introduction of the Transparent and Predictable Terms of Employment Act.

Cause

The employer and the employee agreed on a study cost clause. This study costs clause relates, on the one hand, to the assumption of a study debt that the employee had with his former employer and, on the other hand, to the training that the employee started in January 2021. This study costs clause stipulates that the employee must repay the study costs if the employee leaves employment early. Three years after completing the courses, the study costs would be waived. The employee terminated his employment contract with his employer on 16 August 2022. Since the employment contract ended within three years of completing the training courses, the employer claimed partial repayment of the study costs.

Necessary training?

The employee takes the position that the agreed study cost clause is void, as the training courses were necessary within the meaning of the law (Section 7:611a of the Civil Code). The employee argued that he had been hired by the employer with the intention of doing other work as a registered accountant (in the future). The training was necessary to perform the job of registered accountant, as this training would allow the employee to sign annual report and accounts.

The employer disputes that the employee was hired to work as a registered accountant (in the future). It would have been reasonable for the employee to eventually work as a registered accountant, but no agreements were made about this. Nor did this play a role when the employment contract was entered into. In addition, the training courses were not necessary for the position for which the employee had been hired and the employee took the courses at his own request.

Judgement of the subdistrict court

The subdistrict court agreed with the employer that there was no question of necessary training. There is no evidence, for instance, that the employee was hired with the aim of becoming a registered accountant and that the courses for which the study costs clause was entered into are necessary for the intended position or the position for which the employee was hired. In this regard, the subdistrict court considered it relevant that the employee started taking the courses at his own request and no commitment had been made as to the term within which the employee would become authorized to sign. Since the subdistrict court ruled that no training was necessary, the employer's reliance on the study costs clause succeeded.

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