

Financing adult learning database

Name of the instrument - Local language	Clause de dédit-formation
Name of the instrument - English translation	Payback clause
Scheme ID	91
Country	 France
Reporting year	2020
Type of instrument	Payback clause
Sub-type of instrument	Payback clauses are possible within set limits
Type of entry	Single instrument

Short description	Employers and employees can agree on a payback clause. The courts have defined several principles to be respected in the context of the implementation of the payback clause, particularly in relation to the fact that training expenditures incurred by the company should exceed legal obligations (imposed by law or collective agreement) to fund vocational training. A gradual reduction of the reimbursement depending on the commitment period may be provided, and the retention period should not be excessive, thus preventing the employee from enjoying his freedom to resign (according to the judges who have had to rule on whether or not such clauses are excessive, the period can vary from 6 months to 5 years depending on the duration and cost of the training). The duration may be variable, typically 2 to 5 years, and must be related to the duration of the training and expenditures incurred by the employer. The payback clause only applies in case of the resignation of the employee; it cannot be implemented if the employment contract has been terminated at the employer's initiative (even in cases of dismissal for serious misconduct). This payback clause applies to all employees, irrespectively of their position in the company or their seniority.
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Level of operation	National
Name of a part of the country	Not applicable
Name of the region (for	Not applicable

regional instruments)	
Name of the sector (for sectoral instruments)	Not applicable
Relevance	Further instrument
Legal basis	No law determines the arrangements for implementing the payback clause, but courts had the opportunity on numerous occasions to rule on its conditions of validity. The Court of Cassation had the occasion to address the question of their validity in a judgement dated 17 July 1991, which determined that they were legal but under certain conditions.
Objective(s) and target(s)	The official objective is to protect the employer against poaching effects and to enhance long and costly training actions without too much risk for the company.
Year of implementation	1991
Year of latest amendment	2013
Operation/management	The courts have defined several principles to be respected in the context of the implementation of the payback clause, in the sense that training expenditures incurred by the company should exceed its legal obligations to fund vocational training (imposed by law or collective agreement), nor have been supported (or reimbursed) by an OPCA, nor have been covered by a public grant. Also, a written agreement (or amendment to the employment contract) must be signed prior to the training. The clause must specify the dates, nature, duration and actual cost of the training funded by the company, and the specific terms of reimbursement by the employee. A gradual reduction of the reimbursement depending on the commitment period may be provided, and the commitment period should not be excessive. The duration may be variable (typically 2 to 5 years) and must be related to the duration of the training and expenditures incurred by the employer. The judges verify that the duration is not "manifestly excessive" or disproportionate to the costs incurred by the company. The clause must not deprive the employee of his right to resign. The payback clause only applies in case of resignation of the employee. It cannot be implemented if the employment contract has been terminated at the employer's initiative (even in cases of dismissal for serious misconduct). Finally, the amounts reimbursed by the employee under the payback clause must be allocated by the company to actions in its training plan.
Eligible group(s)	All employees, irrespective of other considerations (age, position, ISCED level, etc)
Group(s) with preferential treatment	No preferential treatment.
Education and training eligible	Any - but mainly used for costly and longer training

Source of financing and collection mechanism	Employer funds training, employee provides (partial) repayment eligible training costs in case of premature departure from the company
Financing formula and allocation mechanisms	The amount to be reimbursed must correspond to actual costs incurred by the employer and should be clearly mentioned in the signed document by the employee and should not be "manifestly excessive". The minimum amount of training expenses incurred to training of the employees are fixed in each of the sectoral collective agreement. If the total amount of training expenses is higher than the amount indicated in the collective agreement, the employer can use the payback clause to ask the reimbursement of the difference. Eligible costs are estimated on the basis of the real training costs.
Eligible costs	Eligible costs include tuition fees and any other cost incurred for the training (travel, accommodation, etc)
Volumes of funding	Not applicable
Beneficiaries/take up	Not applicable
Organisation responsible for monitoring/evaluation	Not applicable
Most relevant webpage - in English	Not available
Recent changes	23-10-2013 : decision by the Court of Cassation regarding the impossibility of reimbursement of wages paid during the training action. Recent changes in response to COVID-19 No changes
Sources	http://www.opcalia.com/telecharger/fiches/fiches-focus/la-clause-de-ded... https://www.service-public.fr/particuliers/vosdroits/F1687 https://www.legalplace.fr/guides/clause-dedit-formation/