

# Legal Alert

New Regulations for Training Leave

July 2010

**New rules for awarding training leave to staff and concluding training agreements, commonly referred to as "loyalty agreements," went into force on 16 July 2010. The amendment introduces major changes from the existing practice, not only because these rules are now governed directly by the Labour Code (rather than an executive regulation, as before), but also because the rules themselves have changed.**

## How much leave and how much time off?

Employees who begin training to raise their professional qualifications **at the employer's initiative or consent** after 15 July 2010 will be able to take training leave and paid time off during their courses.

**Training leave** will now be awarded in two amounts:

- 6 days** in the case of extramural exams, matriculation exams, and professional certification exams, or
- 21 days** for a diploma exam during the last year of studies and for writing the master's thesis.

The length of this leave is thus limited by statute. This is not the case with **time off**, which should be granted for the time of each class and the time it takes to travel to the class. Depending on the type of studies involved, this may add up to many weeks during the course of the year. This is of great practical importance, because during **training leave** and **time off**, the employee retains the **right to receive salary**.

If the employee wants to obtain additional training at his or her own initiative, but the employer does not consent, then they should agree on how the employee will work during the training period. In such case the employer may give the employee unpaid leave or unpaid time off, but this will be entirely within the employer's discretion.

## New loyalty agreements

The maximum duration of a loyalty agreement has been maintained, and will continue to be **3 years**. As before, loyalty agreements must be made in writing.

In addition to provisions concerning the rules for undergoing the training and any undertakings by the employer to provide the employee additional benefits (e.g. purchasing textbooks or covering travel or lodging costs), the agreement should clearly address **rules for reimbursement of training costs covered by the employer** if the employee does not live up to his or her undertaking to continue working for the employer after completion of the training. The greatest changes under the new rules involve this issue. The act provides a detailed list of instances when it is possible to seek reimbursement of costs borne by the employer. This will be the case if:

- the employee, without valid justification, **fails to take up the training to raise his or her professional qualifications** or interrupts the training,
- the employer **terminates the employment without notice due to the fault of the employee** during the course of the training, or after the training during the period set forth in the loyalty agreement,
- the employee **terminates the employment with notice** during the period set forth in the loyalty agreement (but not in the case of termination because of mobbing), or
- the employee **terminates the employment without notice** during the period set forth in the loyalty agreement on grounds of the employer's serious violation of its basic obligations or because of mobbing, when such grounds did not exist.

If the employer seeks to **expand** these grounds, it will open itself up to a charge of introducing terms less favourable to the employee, which under the act is expressly forbidden. Then such terms would be **replaced by operation of law** by the proper terms from the Labour Code. This could raise practical issues for many employers.

## Previous rules

The previous rules for granting training leave will not be abandoned altogether, but will continue to apply to staff who began their training prior to 16 July 2010.

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