

A man with short brown hair, wearing a light blue button-down shirt, is looking down at a white document he is holding. He has a serious expression. The background is a blurred office setting with green plants and windows.

# THE Perils OF Employment Training Contracts

Employer-paid training can come with strings attached.

By Jol A. Silversmith

*[Editor's note: The author is a member of the law firm of KMA Zuckert LLC of Washington, D.C. The views expressed herein are solely those of the author, and the information provided is not, and is not intended to constitute, legal advice.]*

**I**T LOOKS LIKE A GOOD OPPORTUNITY. You'll gain hours and a new type rating. You've already checked Glassdoor and asked your contacts about the operator's reputation. There's just one issue. When the operator sends the paperwork, there's a reimbursement provision buried in the legalese: a requirement that you repay a significant amount of money if you leave the company within two years. Should you still go ahead and take the job?

The answer, unfortunately, is: "It depends." Although such a provision may look unfair, a court may find that it and the contract are enforceable, meaning you would be legally required to repay the money.

This is especially true if the sum at least roughly corresponds to the company's investment in your training. If the

terms are disproportionate, there may be an argument that they are unenforceable, but you would still run the risk of being sued over the contract and, subsequently, the risk of a court finding the contract and its terms to be valid.

Of course, if the opportunity is good enough, you may feel the risk of having to reimburse the company is justified. Or you may believe, no matter what the challenges, that you will "tough it out" until the end of the contract.

Even though there are no easy answers, this article offers some background and guidance about reimbursement clauses in training contracts for aviation professionals. Although the examples I use involve pilots, the principles apply to other aviation professionals as well.

## Training Contracts More Common

For pilots, there's no question that training is expensive. Common estimates of the cost to obtain a commercial pilot license are \$80,000 to \$100,000. Pilots looking for a job with an operator likely already have a commercial license, if not an airline transport pilot (ATP) license, but they also can expect to need a new type rating. Typically, the operator will pay for the necessary type training, which can amount to \$10,000 or considerably more, depending on the aircraft (and the operator may also pay for other recurring requirements). Understandably, the company doesn't want to see that investment walk out the door to a competitor.

Pilot training contracts are not new but do appear to have become more common in the industry in recent years, possibly because pilots are in demand and thus more likely to switch jobs instead of working their way up a seniority ladder. Nor are such agreements unique to aviation. A 2020 survey by the Cornell Survey Research Institute found that nearly 10% of American workers were covered by a training repayment agreement.

The US Federal Trade Commission (FTC) recently expressed concern about the impact of restrictive employment agreements, including reimbursement conditions. Earlier this year, the FTC proposed prohibiting a number of anticompetitive practices in employee contracts, including repayment provisions that are not "reasonably related" to the underlying training costs. But there is no deadline for the FTC to actually adopt a new set of requirements, and it also is not clear what "reasonably related" would mean in practice. In this article, I'll be describing current employment contract law.

## Each Contract Is Unique

There's an old saying in aviation: "if you've seen one airport, you've seen one airport" (meaning, each is unique and must be individually understood). The same is true for contracts; you should carefully review each one on its own merits.

When considering the implications of a training contract, some of the important factors to check include:

- What is the required reimbursement? Is it a fixed amount, or can it increase, for example, if the operator provides additional pilot training at a later date?
- How long does the requirement remain in effect? Does the amount due remain the same, or does it decrease on a pro rata basis over time?

- Are there escape clauses in the agreement? For example, if a pilot is terminated or laid off by the operator, does the repayment obligation remain in effect?
- Does the contract address how disputes over the contract will be handled? For example, if the operator sues a pilot and wins, does the contract provide that the pilot pay the operator's legal fees?

Generally, it may be advisable to seek out an attorney who has experience with employment contracts before signing on the dotted line since some of these issues may not be straightforward, even to a legal professional. For example, since the terms of state contracts are typically governed by state, not federal law—and state laws can vary significantly—it may matter which state's law a contract specifies will govern its interpretation. The law specified

in the contract may not be the same as the state in which the pilot will be based or even the state in which the operator is headquartered.

A further issue that may justify seeking legal advice is exactly how a contract's reimbursement

clause is structured. Historically, the enforcement of a training contract typically has required an employer to go to court, where the employer might have an advantage over an employee but still would have to devote time, effort, and money to proving its case. But it is becoming increasingly common for training contracts to incorporate a promissory note—essentially a financial agreement between the operator and pilot, similar to a bank loan. This type of arrangement is much easier for the operator to enforce, making it much harder for the employee to avoid repaying the funds.

Another circumstance when it is advisable to seek expert assistance is when, after joining an operator, a pilot believes it necessary to resign—not because a better job has become available but because of circumstances such as unsafe working conditions or discrimination based on race, sex, or other protected characteristics. The law usually recognizes the concept of "constructive termination"—that is, when an employee is effectively forced to resign—and in these circumstances does not consider the resignation to be a breach of the employment contract. But it also is important to ensure that any decision to resign for those reasons is properly handled to best manage the reimbursement issue, among other matters.

One further question to consider—although unfortunately not easy to answer—is whether the operator may be a "paper tiger." Just because a contract states that the company *can*

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recover training costs from departing pilots doesn't mean that it *will*. Enforcing a contract is not cost- or risk-free.

However, to collect monies that they believe are owed to them, employers have other options apart from litigation—such as sending the claim to a collection agency, which may affect a pilot's credit score, in addition to triggering calls and letters. Additionally, the Pilot Record Improvement Act of 1996 (PRIA) requires operators to respond to inquiries from new employers about a pilot's past performance. Operators have the option, however, of declining to provide any positive feedback that is not required by law—or even providing negative feedback (such as disciplinary records not related to aircraft operations) along with the legally required records.

### Training Contract Issues

Some cases involving training contracts have generated reported court decisions. (It's likely that many others have been filed but have ended with settlements or decisions that have not been widely distributed.) Below are a few recent examples that illustrate some of the complexities around the issue and the different possible outcomes.

- A pilot was hired by a charter operator, with a two-year obligation to reimburse it for his training costs. The pilot left the operator after two months, and the company did not sue until four years later. An Arizona court ruled that the delay exceeded the “statute of limitations”—essentially, the limited time in which the carrier was allowed to sue under the contract—and not only dismissed the case but awarded legal fees to the pilot.
- In contrast, the same charter operator sued another pilot who had departed after only two months. In this case, the pilot's defense was that he had been constructively

terminated because he had been required to fly an unair-worthy aircraft. But the court concluded that the pilot had failed to present sufficient evidence and therefore ruled that the operator could recover not only the training costs (\$40,000) but also legal fees from the pilot.

- A different operator sought reimbursement of training costs from a pilot who quit 18 months into a two-year obligation. A Florida court concluded that the operator was entitled to some but not all of its requested damages and awarded the company \$6,600 out of the \$20,400 requested. [preceding edit ok?] The court's reasons included that one of the pilot's certifications that resulted from the training was valid for only one year and the carrier had fully benefited from it. In addition, there was a \$2,000 offset due the pilot because the carrier had failed to fully pay him for flights. The court also concluded that the carrier was not entitled to legal fees because it had not prevailed on the majority of the issues.
- A new complaint was filed earlier this year on behalf of a Part 135 all-cargo carrier's pilots. The pilots' complaint states that they are required to repay between \$20,000 to \$30,000 if they leave the carrier's employ within 18 to 24 months. The complaint goes on to allege that the received training costs the carrier far less than that amount and that the training is moreover of limited practical value. The case alleges that the repayment obligations violate federal and state law. The carrier has not yet responded to the complaint.

The bottom line: a training contract should be considered the legal equivalent of inclement weather. It doesn't necessarily mean that you shouldn't proceed—but you need to understand the conditions and be prepared for what to do if things go wrong. 🌀

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