

Heder v. City of Two Rivers:
**Outlining Necessary Steps for Creating Enforceable
Training Repayment Agreements**

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Training is one of the most expensive considerations for any employer. Not only has the law imposed what seems to be endless training obligations (e.g. sexual harassment), but employees must obviously be trained in the basic elements and requirements of their jobs. Training also becomes costly given the high rate of turn-over in today's job market. Employees more commonly leave for higher paying jobs or the private sector after being trained at the department's expense.

One way to discourage employees from using an employer as a training ground and then leaving is to use Training Repayment Agreements. The cost of the training is paid by the department, but the employee agrees to repay those costs if he or she leaves before serving a certain period of time. A recent case in Wisconsin, *Heder v. City of Two Rivers*, addressed whether these agreements are valid and what is necessary to enforce them.

Background

The employee in this case, Christopher Heder, was a firefighter for the City of Two Rivers. He began working for the City in January of 1994. In May of 1997, the City and the Union signed a Memorandum of Understanding which required all employees to be licensed as paramedics and complete all necessary training by October 1, 1997. The Memorandum was retroactive to February of 1997.

The Memorandum also required firefighters who voluntarily resigned within three years of starting their paramedic training to repay the City an amount equal to the costs of tuition, books, and training costs. Employees who left before three years after the training also were required to pay damages ("liquidated damages") equal to the amount of overtime wages paid as a part of the training and premium pay received as a paramedic.

Heder left the City in August of 1999 to work as a firefighter for another municipality. This was approximately two and one-half years after the training. The City therefore enforced the Agreement and deducted the training costs and liquidated damages from his last pay check. Heder's last paycheck was reduced to nothing. Heder sued the City claiming the Memorandum was unenforceable and the deductions were illegal.

Court's Decision on the Training Repayment Agreement

The case was heard by District Court Judge Adelman in the Eastern District of Wisconsin. Heder made a number of arguments regarding the agreement which Judge Adelman addressed. To begin with, Heder claimed that he did not personally agree to the Memorandum. The Judge quickly disposed of this argument noting that the Union was the valid collective bargaining

representative and a memorandum of understanding was a valid form of a collective bargaining agreement under the Municipal Employment Relations Act. The fact that the Memorandum was never ratified by the union membership or that it was back-dated had no effect on the enforceability of the Memorandum generally.

Turning to Judge Adelman's decision regarding the requirement of repayment of training expenses, it first appeared that he might prohibit them altogether. He noted that "[a]t least two states have outright banned such contracts." He also stated that such agreements "must be scrutinized" and are "subject to rigorous scrutiny due to public policy concerns" just as noncompete agreements are.

In the end, however, Judge Adelman upheld the Training Repayment Agreement, subject to some restrictions on its use. Specifically, he held that:

- training repayment is subject to a requirement of "reasonableness";
- it must be "reasonably necessary" to protect the employer's interests;
- the amount to be repaid must be related somehow to the actual cost of the training;
- the amount, duration, and schedule of repayment credit must be fair; and
- the employee must be given credit towards the potential repayment for the time worked.

The most important factor of Judge Adelman's analysis is the amortized or prorated scheduling which it requires. In Heder's case, it meant that of the \$1,424 the Department spent on his training, it could only recoup 1/6 of this amount. The Judge determined that Heder worked 2 ½ of the 3 years he was required (½ year remaining ÷ 3 years total = 1/6) and should receive "credit" for this time. Therefore, Judge Adelman only required Heder to repay \$237.46 of the training costs.

Liquidated Damages and Withholding

While Judge Adelman did uphold the Training Repayment Agreement generally, he decided in favor of Heder on the remaining issues. The Judge determined that requiring an employee to repay wages (i.e. the overtime and premium they received as paramedics) is "an illegal kick-back" and "thus a transparent violation of the FLSA." The fact that it was labeled as "liquidated damages" did not save the City.

In addition, Judge Adelman stated that the City violated the FLSA because, after the deductions, Heder's last paycheck was nothing. He noted that an "employer may not reduce a worker's wage below the statutory minimum to collect a debt." Any deduction in Heder's last paycheck had to leave him with at least minimum wage for every hour he worked in that pay period.

Practical Considerations

It should first be emphasized that this is only a district court opinion. That means that its precedence is limited unless it is appealed. That being said, the decision is still important

because it is really the first case to address this issue in Wisconsin and was selected to be included in the Wage and Hour reporter, a common source for attorneys to use in arguing these types of cases.

As a practical matter, the *Heder* case provides a good road map to implementing a training repayment policy for your Department. Here are a few things to keep in mind:

- Explain the need. Employees will never be thrilled with the prospect of repaying training costs. However, they also do not want to be shocked by finding out about the policy after they make the decision to leave. Courts are going to be less sympathetic to the employer if it doesn't explain the need for the policy to the employees ahead of time.
- Coordinate with the Union and Human Resources. While the WERC has determined that there is no duty to bargain over Training Repayment Agreements that are required of all applicants (e.g. *City of Milwaukee Police & Fire Commission*, WERC Decision No. 29402, 1998), it is still important to have everyone on the same page to provide fairness in appearance and substance. Training Repayment Agreements for current employees, of course, must be bargained with the Union.
- Like the *Heder* decision emphasizes, keep it reasonable. A repayment policy that requires an officer to still repay tuition or training expenses after 20 years is not going to be considered reasonable by virtually any court.
- Have a set schedule and set off for repayment. While the Court implemented its own requirement, a good rule of thumb is a three year maximum with a reduction of 1/3rd each year. So if there are \$3,000 in training expenses, the employee gets a credit of \$1,000 per year he or she stays with the Department.
- Keep it focused. Avoid traps like the liquidated damages provision the City had in the *Heder* case. This is an automatic opportunity for a court to try and strike down your policy if it finds it to be too overbearing.

While no one can ever predict what a court might do, these guidelines ensure that your Department is taking the good-faith steps necessary to protect its investment in the training while not being unnecessarily limiting on the mobility of its employees.