OVERVIEW

• Scholarship Loan Agreement Basics
  • Background and Purpose
  • The Model Scholarship Loan Agreement and Promissory Note
  • Legal Issues Related to Scholarship Loan Agreements
  • Alternatives to Scholarship Loan Agreements

BACKGROUND AND PURPOSE

• A scholarship loan agreement is like an educational loan
  • In exchange for training, an apprentice agrees to pay back the cost of the training upon graduation.
  • Payment can be in cash or through in-kind service to contributing contractors.
BACKGROUND AND PURPOSE

- SLAs serve many purposes:
  - Encourage apprentices to finish training;
  - Encourage apprentices to work for contributing contractors after graduation;
  - Prevent freeloading and unfair competition from non-contributing contractors;
  - Encourage contractors to invest in training by protecting that investment; and
  - Help to keep training fund solvent by ensuring that journeymen trained by the program work for contributing contractors.

MODEL SCHOLARSHIP LOAN AGREEMENT

- Model includes two parts:
  - Loan Agreement
  - Promissory Note

- Apprentice and Committee sign new agreement and promissory note each year.

- Annual agreements serve two purposes:
  1. Remind the apprentice of his/her obligations; and
  2. Allow the JATC to accurately calculate the cost of each year of training.

MODEL SCHOLARSHIP LOAN AGREEMENT

- Key Components of the Model SLA and Promissory Note:
  - Agreement states the cost of the training;
  - Agreement states the amount of the loan;
COST OF TRAINING AND LOAN AMOUNT

• The loan amount must be a reasonable approximation of the costs of training.
• Cost of training should be calculated each year, and may include equipment, maintenance, cost of operating training center, instructors’ salaries, and materials.
• Cost should exclude: grants or funds from a source other than employer contributions, and expenses the JATC incurs for any training for non-apprentices (Journeymen/CW-CEs).
• Base the calculation on last year’s costs:
  • Divide total cost of training by the number of apprentices trained.
  • Result is the maximum loan amount that may be charged for the training period.
  • You can always charge less, but never more than the maximum.

MODEL SCHOLARSHIP LOAN AGREEMENT

Key Components of the Model SLA and Promissory Note

• Agreement states the cost of the training;
• Agreement states the loan amount;
• Agreement states Apprentice’s agreement to neither seek nor accept employment from a non-contributing employer;

WORKING FOR CONTRIBUTING EMPLOYERS

• Apprentices must agree that, after graduation, they will not seek or accept employment in the Electrical Industry, unless the work is performed under a collective bargaining agreement that provides for the payment of contributions to:
  • The Committee; or
  • Another JATC sponsored by or affiliated with a local union of the IBEW.
• Not enough that contractor is a union employer; contractor must be a contributing employer.
WORKING FOR CONTRIBUTING EMPLOYERS

• Electrical Industry is defined broadly to include:
  • All work covered by CBAs to which the IBEW or its affiliated local unions are a party;
  • All work falling under the trade jurisdiction of the IBEW Constitution; or
  • Any work to which an electrical worker has been assigned, referred, or can perform by virtue of electrical training.

MODEL SCHOLARSHIP LOAN AGREEMENT

Key Components of the Model SLA and Promissory Note

• Agreement states the cost of the training;
• Agreement states the loan amount;
• Agreement states Apprentice’s agreement to neither seek nor accept employment from a non-contributing employer;
• Agreement and Note state terms of repayment;

REPAYMENT

• Option 1: In–Kind Credits
  • 5 Year commitment to work for contributing employers after graduation.
  • Journeymen earn credits for each “journeyworker working year,” which is defined by each JATC as a certain number of hours in a 12-month period.
  • In–kind repayment obligation is typically capped at a total number of journeyman hours or actual years of employment.
  • Model Promissory Note sets out a back-loaded repayment schedule.
## Repayment Schedule

<table>
<thead>
<tr>
<th>Journeyworker Working Years</th>
<th>% Total Reduced</th>
<th>Annual Amount Reduced</th>
<th>Cumulative Amount Reduced</th>
<th>Net Amount Due</th>
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</thead>
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<tr>
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<td>10%</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$9,000</td>
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<tr>
<td>2</td>
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<tr>
<td>Total</td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Option 2: Repayment in Cash**
- Borrower always has this option.
- In reality, only triggered if the Agreement is breached.
MODEL SCHOLARSHIP LOAN AGREEMENT

Key Components of the Model SLA and Promissory Note

- Agreement states the cost of the training;
- Agreement states the loan amount;
- Agreement states Apprentice’s agreement to neither seek nor accept employment from a non-contributing employer;
- Agreement and Note state terms of repayment;
- Agreement and Note state consequence of breach; and

BREACH

Three ways the borrower can breach the agreement:

1. Work for a non-contributing employer in the Electrical Industry;
2. Quit or be terminated from the program; or
3. Work outside the industry.

Upon breach:

- Borrower forfeits option to pay the loan through in-kind credits;
- Outstanding loan amount due and payable immediately;
- Borrower must pay interest from date of Agreement to final payment;
- Borrower does receive credit for any previous in-kind credits.
- Ex. If the borrow worked for 3 years as a journeyman, then owes 55% of total amount of loan at breach.
MODEL SCHOLARSHIP LOAN AGREEMENT

Key Components of the Model SLA and Promissory Note
- Agreement states the cost of the training;
- Agreement states the loan amount;
- Agreement states Apprentice’s agreement to neither seek nor accept employment from a non-contributing employer;
- Agreement and Note state terms of repayment;
- Agreement and Note state consequence of breach; and
- Agreement and Note state how terms may be enforced.

ENFORCEMENT
- Model Agreement and Note contain a mandatory arbitration process for enforcing SLA obligations.
- Under this process:
  - Arbitration is mandatory;
  - Arbitrator must award interest on any monetary award;
  - Arbitrator must award prevailing party costs and fees, including arbitrators’ fee, attorneys’ fees, etc.; and
  - Arbitrator’s award may be enforced in court.

MODEL SCHOLARSHIP LOAN AGREEMENT AND NOTE

Questions?
LEGAL ISSUES

• Three Primary Legal Issues:
  • Scholarship Loan Agreements are valid and binding contracts;
  • Scholarship Loan Agreements become part of the “welfare benefit plan”
    for the purposes of ERISA coverage; and
  • ERISA coverage impacts fiduciary obligations and enforcement options.

SCHOLARSHIP LOAN AGREEMENTS ARE VALID CONTRACTS

• Courts have rejected various challenges to the validity of
  Scholarship Loan Agreements.
  • SLAs are not contrary to public policy because nothing in the agreement
    restricts a person’s ability to work. It just provides for consequences
    should the person work for a non-contributing employer, and the
    borrower can pay off the loan in cash.
  • SLAs are consistent with public policy because they encourage unions
    and contributing employers to invest in training.

ERISA COVERAGE

• Apprenticeship Fund is a welfare benefit plan under ERISA
  because it is established and maintained for the purpose of
  providing “apprenticeship or other training programs . . .” 29
  U.S.C. 1002(1).
  • SLAs become part of the “welfare benefit plan” for the purpose
    of ERISA.
  • Has a significant impact on administration and enforcement of
    SLAs.
FIDUCIARY OBLIGATIONS

Fiduciary Obligations Extend to Administration and Enforcement of Scholarship Loan Agreements

• Administration:
  • SLAs are consistent with fiduciary obligations because:
    • Trustees have a duty to protect fund assets;
    • Recovering training funds benefits all fund participants.

• Enforcement:
  • Repayment amount must be a reasonable estimate of costs;
  • Repayment cannot be a penalty or punishment; and
  • Enforcement must be evenhanded - no discrimination or arbitrary enforcement.

ERISA’S IMPACT ON ENFORCEMENT

• Prior to 2002, SLAs were typically enforced under ERISA Section 502, which provides federal courts with jurisdiction over civil actions for “appropriate equitable relief.”

• Equitable relief for the purpose of ERISA is defined as injunctive relief, mandamus, or restitution. Mertens v. Hewitt Associates, 508 U.S. 248 (1993).

• Seeking repayment was considered “restitution” for the purpose of fitting into “appropriate equitable relief.”

ERISA’S IMPACT ON ENFORCEMENT

• In 2002, the Supreme Court held that equitable restitution means only actions seeking the return of an identifiable “res.” Great-West v. Knudson, 534 U.S. 204 (2002).

• Res means a thing – Ex. Particular identifiable funds or property in the possession of another.

• Money owed under a contract is not a specifically identifiable thing.

• Instead, a suit seeking contractual damages seeks “legal” - not “equitable” - relief.

• Because ERISA provides only “equitable” relief, a Plan cannot sue for re-payment under ERISA.
ERISA'S IMPACT ON ENFORCEMENT

• JATCs may no longer use ERISA to enforce SLA re-payment obligations.
  • Honolulu Joint Apprenticeship & Training Committee v. Foster, 332 F.3d 1234 (9th Cir. 2003).

What can you do?

• Option 1: Arbitration
  • Use model agreement's arbitration provision.
  • If borrower complies with the arbitrator's decision, that is the end of the dispute.
  • If the borrower does not comply, must go to court to enforce the arbitrator's decision.
  • After Great-West, the question is: Which court?

At least one federal court has held that an SLA arbitration award is not enforceable in federal court:


But an SLA arbitration award should be enforceable in state court.
ERISA'S IMPACT ON ENFORCEMENT

- Option 2: State court breach of contract suit
  - SLA and Promissory Note are contracts.
  - State courts have jurisdiction to hear claims for breach of contract.
  - BUT SLAs are also "welfare benefit plans" under ERISA, and ERISA preempts all state laws—including breach of contract claims—that "relate to any employee benefit plan."
  - Question after Great-West: If JATC cannot enforce a SLA using ERISA, can ERISA still preempt a state court enforcement action?

ERISA'S IMPACT ON ENFORCEMENT

- Answer: The courts have split on this question.
  - Oregon, Florida, and Delaware have held that ERISA preempts state court contract actions:
    - *Liberty Northwest*, 85 Pac. 3d 871 (OR 2004)
    - *MEBA Medical and Benefits Plan*, 867 So. 2d 1184
  - BUT

ERISA’S IMPACT ON ENFORCEMENT

- Other states have ruled that ERISA does not preempt state court contract actions:
  - *AFL Hotel & Restaurant Workers*, 132 P.3d 1228 (Haw. 2006)
  - *National American Insurance Co.* 117 P.3d 100 (Ne. 2006)
  - *JATC (SMART Local 36)*, 2016 URM 363664 (E.D. Mo. Nov. 01, 2016)
- Courts appear to be moving in the direction of holding that ERISA does not preempt state court breach of contract actions.
ENFORCEMENT

- Enforcement decisions must be made on a case-by-case and state-by-state basis.
- In addition to arbitration and state court actions, some JATCs have:
  - Successfully sued in small claims court on the promissory note itself (can’t do this if contains arbitration clause); or
  - Used a collection agency.

ENFORCEMENT

- What about borrower’s bankruptcy?
  - Borrower’s obligation is not avoidable in bankruptcy.
  - SLAs are “educational loans” under the Bankruptcy Code, so the borrower cannot obtain forgiveness under the Code.
  - To preserve rights, Fund must participate in bankruptcy action.

ALTERNATIVES

- Some JATCs are experimenting with alternatives to SLAs
  - Alternatives seek to incentivize graduation and continued employment in the industry rather than penalizing those who leave. Also seek to eliminate enforcement problems.
  - Example – Tuition Reimbursement Plan
ALTERNATIVES

• Under typical tuition reimbursement plans:
  • Apprentice pays tuition as a set hourly payroll deduction;
  • Apprentice signs annual agreement; and
  • Payroll deduction authorized in annual agreement and in CBA.

ALTERNATIVES

• Apprentice gets full refund if:
  • He/she completes apprenticeship program;
  • Works 10,000 hours over period not to exceed 8 years; and
  • Works those hours for a contributing employer.

ALTERNATIVES

• Apprentice does not get a full refund if:
  • Apprentice does not complete program; or
  • Apprentice fails to work required number of hours for contributing employer.
QUESTIONS?

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