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The employment contract may include a clause providing for partial reimbursement of the welcome bonus in case of resignation

In a ruling issued on May 11, 2023, the Cour de Cassation (French Supreme Court) held that an employment contract may impose on an employee the obligation to repay part of his/her "welcome bonus" if he/she resigns before the date on which full payment of the bonus is due.

In order to attract and retain employees, some companies offer a welcome bonus, also known as a sign-on bonus.

However, although such a bonus is generally paid in full when the employee takes on his/her new job or at the end of the trial period, the acquisition of the welcome bonus may be contractually conditional upon the employee's presence within the company for a predetermined length of time. In this case, the welcome bonus becomes a "retention bonus".

The consequence of this requirement is that in case of termination of the employment contract at the employee's initiative, the latter has the obligation to reimburse the company the prorated portion of the bonus already received, corresponding to the time remaining until the bonus is fully acquired.

The *Cour de Cassation* was asked to rule on the lawfulness of such a clause because of the interference it could have with the freedom to work.

In the case at hand, an employee was hired by a company on January 1, 2016 and resigned from his position on March 16, 2017.

His employment contract provided for the payment of a welcome bonus of 150,000 euros gross within 30 days of the employee taking up his new position.

The welcome bonus clause set forth in the employment contract stipulated that in case of resignation or dismissal for serious or gross misconduct before the end of the third year following the employee's start date,

the employee could keep 1/36th of the welcome bonus for each full month worked. In other words, in case of termination of the employment contract, the employee has the obligation to repay the balance of the bonus corresponding to the number of months not worked for the company between January 1, 2016 and December 31, 2018.

As the employee resigned on March 16, 2017, the company initiated proceedings before the labor court and sought the partial reimbursement of the welcome bonus, in accordance with the welcome bonus clause set forth in the employment contract.

The Court of Appeals disagreed with the company's reasoning and ruled that the clause imposing on an employee the obligation to repay the prorated portion of the bonus in case of resignation was unlawful insofar as, while such a bonus could be made conditional on the employee's belonging to the company at the time of payment, it could not be conditioned to the employee's presence within the company at a date subsequent to its payment, otherwise this would constitute an infringement of the freedom to work.

Conversely, the *Cour de Cassation* agreed with the company's reasoning and held, in its ruling of May 11, 2023[1], that the obligation to reimburse the prorated portion of the welcome bonus in case of resignation was lawful, as it did not constitute an unjustified and disproportionate infringement of the freedom to work, insofar as the clause agreed upon between the parties was intended to retain the employee and was unrelated to the remuneration of the employee's activity.

Consequently, as a result of his resignation, the employee had the obligation to repay part of his welcome bonus corresponding to the number of months not worked between the date on which he left the company's payroll and December 31, 2018.

However, a grey area remains concerning the lawfulness of this contractual clause in case of dismissal of the employee for serious or gross misconduct. Indeed, repayment of the bonus could then be construed as a prohibited financial penalty.

Pending a court decision on this point, it is advisable to provide for staggered payment of the bonus during the contractually agreed "retention" period, in order to avoid any disputes in relation to the repayment of the overpayment receive by the employee.

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[1] Labor Chamber of the Cour de Cassation, May 11, 2023, No. 21-25.136

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