Legal Update Article

# Forging Commitments: How Manufacturers Can Promote Retention After Investing in Employee Training

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The labor shortage has forced many manufacturers to adopt new strategies to meet their staffing needs. As commentators in the Jackson Lewis Manufacturing Industry Group have previously written, these include adjusting background check requirements, working with public school systems to train and recruit students, revising drug testing criteria, and placing greater emphasis on diversity and inclusion.

With an entire generation of workersnearing retirement, younger workers who enter the manufacturing field are limited and largely untrained. A pressing issue for many manufacturers is how to attract and retain skilled workers after investing the time and money to train them. Manufacturers are concerned that employees might leave for higher paying positions at other companies once their training is completed or lose their interest in their business. There are ways manufacturers can encourage employees to stay.

### Attracting New Employees: A Well-Kept Secret

The old image that factory jobs are low-paying, dark, and noisy persists. Modern manufacturing positions offer outstanding pay in clean, well-lit environments, often in maintaining or operating high-tech equipment. Indeed, such are essential to industries for our country and the entire world.

The outdated idea that employees in manufacturing were cogs in a giant industrial machine with no connection to the final product or customer is being countered by companies educating their employees on the importance of their work, building pride in the quality of what is produced, and tying bonus programs to the success of the company. Employees want to have pride in their work, and manufacturers increasingly recognize that pride builds passion and commitment.

The National Association of Manufacturers developed the "Creators Wanted" campaign to correct these misconceptions and encourage students, veterans, and underrepresented communities to pursue manufacturing careers. The campaign provides digital, 3D tours of several facilities and showcases exciting new technologies, such as production-grade 3D printing and CNC laser cutting. The campaign is working to decrease the skills gap and raise positive perceptions about the industry.

Manufacturing can provide excellent employment and good career paths for many employees. A dedicated, multifaceted effort by manufacturers can achieve an optimal workforce in today's environment.

### Training Employees: Modern Apprenticeship Programs

Apprenticeship programs allow manufacturers to partner with local community colleges or other programs to develop a pipeline for skilled workers. These programs provide valuable job skills to youth, older adults, and workers from diverse backgrounds. A 2020 study from Opportunity America and the Brookings Institution concluded that graduates of a Kentucky apprenticeship program earned a 63 percent higher salary than community college graduates in programs such as IT and liberal arts.

### Retaining Trained Workers

For many industrial workers, wanting to stay at a company is about more than just the pay. Manufacturers increase retention of skilled workers by providing non-financial benefits, such as flexible work schedules, a positive work environment, increased vacation, or paid time off, and other "soft benefits," as well as good health insurance and a generous 401(k) match. Having a clearly defined career path, with good starting compensation, pay raises as employees advance, and opportunities for talented employees to move into management, is also important to many younger workers who prioritize career growth more than their predecessors. This may include providing tuition reimbursement. Pride in work is also very important. Workers want to feel part of something valuable.

Sometimes, manufacturers provide specific training to enhance the employee's skills and increase their value.

### Repayment Agreements

Repayment agreements (with certain caveats) offer a layer of protection for manufacturers seeking to protect their investment in employee training. Under a repayment agreement, employees agree to repay part or all of the costs of their training if they leave within a certain time.

Additionally, manufacturers may boost retention through the incorporation ofnon-compete agreements to make it harder for an employee to jump directly to competitors after they have invested so much or shared confidential information. Enforcement of these is jurisdiction-dependent and fact-specific.

A properly executed repayment agreement creates a legally enforceable contract requiring an employee to reimburse an employer for certain educational expenses advanced by the employer related to the job. Before contemplating such an agreement, manufacturers should determine the circumstances under which an employee would have to repay these educational expenses. For example, many employers do not require repayment when employees are laid off; but some require repayment if an employee is terminated for cause or if they quit.

Repayment agreements must comply with the Fair Labor Standards Act (FLSA). The FLSA requires non-exempt employees be paid at least minimum wage and overtime. A repayment agreement may violate the FLSA if it seeks repayment for educational programs, such as apprenticeships, where hourly pay encompasses a portion of the training cost. Accordingly, employers could possibly require reimbursement for tuition, books, and materials.

In a 2016 California decision, the court granted summary judgment to the employer, finding a tuition repayment agreement to be an enforceable contract and not an invalid restraint on employment. *USS-Posco Industries v. Case*, 244 Cal.App.4th 197, 197 Cal.Rptr.3d 791. Under that repayment agreement, the employee had to attend a presentation session before signing the agreement. The program was voluntary, with a cost of $46,000. The employee was required to reimburse $30,000, minus $1,000 per month of employment, absent a compelling hardship. The court enforced the repayment agreement, determining the contract was not for necessities and was not procedurally unconscionable.

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Manufacturers considering implementing a tuition repayment or a non-competition agreement program should work with an experienced attorney in their jurisdiction. Contact a Jackson Lewis attorney if you have any questions about how to design an apprenticeship program or partnering with educational institutions.

(Law clerk Jackson Biesecker contributed significantly to this article.)