

Welcome to *Policy Matters*, an engaging and informative monthly e-newsletter featuring expert insight and analysis on emerging relocation products, policies and services that can provide immediate benefit to your organization.

August 2009

What is the Status of Repayment Agreements in Today's Relocation Environment?

In prior *Policy Matters* we discussed a number of relocation issues that have arisen due to the on-going economic and residential real estate crisis. While these "hot topic" issues are timely, it is also essential to revisit other areas of relocation policy that remain important elements in controlling the total cost of relocation. One of these relocation policy elements is the Repayment Agreement (also known as a Payback Agreement).

When a company moves an employee to a new location or hires an employee who needs to relocate, they do so with the expectation that the employee will remain with the company for a period of time. The purpose of a Repayment Agreement is to recover those costs (all or partial) if the employee leaves before the end of that designated period of time. The monetary payback amount from the employee is most often determined by the length of their required employment time and if the termination was voluntary.

When developing your Repayment Agreement, there are a number of items that need to be considered:

The Decision to Have a Repayment Agreement

Repayment Agreements began to be widely adopted in the late 90's when Y2K computer experts (preparing for year 2000) were in high demand and difficult to retain. A vast majority of companies now have such an agreement in place, and the prior debates on whether to have a Repayment Agreement have all but ended.

While the Repayment Agreement was originally implemented for new hires, it is now increasingly extended to all transferees. In fact, there does not appear to be a downside to having an agreement in place. Companies have concluded it is reasonable to require that a transferee work a minimum amount of time at the new work location because the company has spent a considerable sum of money to move the transferee (along with his or her family) in order to have access to their experience and set of skills. If an employee leaves a company soon after a relocation, the company's return on their relocation investment will be minimal or non-existent.

Therefore in order to reduce this risk, companies have instituted the Repayment Agreement in order to encourage employee retention. However, another compelling reason for the Repayment Agreement is that most expense obligations arising from the agreements are actually paid by the transferee's new employer. The majority of departing employees typically negotiate this repayment obligation as a part of their new employment package. Therefore, few companies would want to forfeit the opportunity to recover these relocation costs—especially since they are often paid by the new employer.

Drafting the Repayment Agreement

To ensure the agreement is legally enforceable, the company's legal counsel should review the document. The document must be carefully created due to nuances in the types of expenses subject to payback and other employment relationship considerations. In addition to relocation issues, there are often human resource and cultural issues that must be addressed when drafting a Repayment Agreement.

Because the document is a contract, it must include dated signatures from both the transferee and someone acting on behalf of the company. Decisions will need to be made on the length of the repayment period, what items are covered, and what constitutes a separation from the company that would trigger the provisions of the Repayment Agreement. In addition, a company should have a process in place for enforcing the Repayment Agreement; however, this should not be in the agreement itself. Rather than starting from scratch, SIRVA has a number of Repayment Agreements currently in use and available as templates.

Determining the Repayment Period and the Percentage to be Returned

It is important to first decide how long the agreement will be in effect and whether or not the expenses will be prorated during the repayment period. Agreements vary from one to three years. Most companies have migrated to two years (with full payback in the first year) which is now a best practice.

The next step is to decide the amount of the expenses to be paid back by the employee, as determined by the length of time the transferee remained with the company. Companies can prorate these agreements, choose not to prorate, or use both philosophies. For companies that do not prorate, the whole amount is due if the transferee voluntarily leaves at any time during the agreement. If companies do prorate the entire agreement, the prorated period can be based on a monthly or quarterly schedule. Industry best practice appears to be a two-year agreement with 100 percent of the expenses required to be repaid during the first year and then prorated after the first year on an equal monthly basis. For example, if the transferee leaves in the 13th month then he/she would owe 11/12ths of the repayment amount.

Expenses Subject to Repayment

The vast majority of companies require that all expenses paid directly to the transferee (or to a provider of relocation services on their behalf) are subject to the provisions of the Repayment Agreement. However, due to the tax ramifications of two-transaction home sale programs (BVO and AVO-type), inclusion of the cost of these home sale programs can be legally tenuous. In order to be able to recover the home sale costs, specific language should be included in the agreement.¹ Otherwise, for the company to proceed to recoup the home sale costs (other than a transfer tax) which were not incurred in the first transaction could jeopardize the tax treatment of a company's home sale program. It is also recommended that the company list the other costs they incurred including the cost of the exceptions made to the relocation policy.

¹ Language which should be included in the agreement: "The company has or will spend a sum of money which may include, but is not necessarily limited to (depending on the relocation policy applicable to the employee) expenses incurred by the company which are associated with the sale of the employee's former residence including the costs and expenses incurred by the company to acquire and dispose of the employee's home under a qualified home sale program. "

Separation from the Company

As mentioned previously, the purpose of a Repayment Agreement is to recover costs that a company, acting in good faith, incurred expecting their employee to provide services for a reasonable period of time. Therefore, the intent is to address the issue of separation from the company through voluntary resignation. It is critical that these agreements and policy wording contain not just the clause “voluntarily terminate” but rather the words “voluntarily terminate or are terminated for cause.” Without such wording, a person who was planning to resign could escape the provisions of the Repayment Agreement by simply acting in such a way that would result in them being “terminated.” However, if the employee did not have a choice in a termination (such as in a reduction in force) the Repayment Agreement should not apply.

Enforcement and Collection Process

Once you have incorporated a Repayment Agreement into your policy, the time will come when you will be faced with the task of enforcing it. To limit the amount of possible negotiations with the employee, as well as possible internal reluctance to enforce the agreement, define a clear process ahead of time that will be followed.

SIRVA Data

SIRVA completed a Benchmark on Repayment Agreements in February of 2009. Results below are based on the highest level policy tier of 283 companies varying in size, relocation volume and type of industry.

Agreement Required	Length of Agreement	Prorated
Yes – 71%	12 months – 57%	Yes – 56%
	18 months – 4%	
	24 months – 35%	
No – 29%	Other* – 4%	No – 44%

* Less than 12 months or more than 24 months

It should be noted that the percentage of companies having such agreements in place would be higher if new hires were considered. The clear trend shown is that companies are increasingly moving to a two-year agreement with full repayment in the first year.

Summary

Repayment Agreements are an important feature of a well thought out relocation program and companies should revisit this area to ensure their agreement is still adequate. In addition, companies should be certain that their agreement is properly structured to recover all the costs incurred in the applicable time period.

The effective use of a Repayment Agreement can be a key safeguard in controlling the cost of your relocation program. For more information on this topic, please contact David Barlow or Hank Roth, as noted below.

David B. Barlow Jr., SCRP, GMS, is a senior vice president and senior consultant at SIRVA Relocation. David joined SIRVA in 2000, bringing with him more than 33 years of human resources and global relocation experience. He has completed a three-year term on the board of directors of ERC and a seven-year term on ERC's Public Policy Committee. David has received ERC's Meritorious Service Award and three ERC Distinguished Service Awards. David can be reached at 925.824.3109 or david.barlow@sirva.com

Henry (Hank) Roth is senior counsel for SIRVA Relocation and has been involved in the relocation industry since 1988. He is currently an appointed member of the Employee Relocation Council (ERC) Public Policy Committee dealing with industry-wide tax and legal issues. In 2006, he was awarded the prestigious ERC President's Award for his work in obtaining the new Revenue Ruling 2005-74 from the Internal Revenue Service as well as the Meritorious Service Award for other contributions to the relocation industry. Hank can be reached at hank.roth@sirva.com or 216.606.4191.

The foregoing is intended as general information only. SIRVA suggests that decisions as to your specific situation should be made only after full evaluation of your circumstances with your company leadership, tax and legal advisors, and HR personnel.

© 2009 SIRVA, Inc. / www.sirva.com / blog.sirva.com SIRVA and the SIRVA LOGO DESIGN are registered service marks of a subsidiary of SIRVA, Inc.