

## Scholarship agreements: Solution or contingency?



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We would like to inform you the latest case law trends and practical solutions in relation to the problems that may be faced by companies as a result of executing a scholarship agreement. In a recent case, a company –initially- hired a person under a scholarship agreement. Upon the expiration of such agreement, the grantee of the scholarship started to provide services to the company under an employment relation, which subsequently derived in a claim for proper registration of the start date.

In light of this, it is important to revise the purpose of scholarship agreements:

This type of agreement is intended to provide professional training with a view to giving the person the necessary knowledge and specialization for his professional development.

Given the employee's claim requesting that the date on which the relation started with company under the scholarship agreement be registered as her start date, the company refused to do so and the employee considered herself constructively dismissed for the employer's fault.

Both the First Instance Court and the National Court of Appeals in Labor Matters admitted the employee's claim and ordered the company to pay the statutory compensation plus the pertinent fines for improper registration.

The grounds for both judgments were as follows:

1. Even though the law does not define 'scholarship', it is, in broad terms, a type of contract not listed in the Argentine Civil Code which is entered into between companies and education entities with a purpose ranging from the simple practice of a trade to the experimental stage of theory studies at several levels, all with the specific purpose of providing training to the grantee".
2. Although both courts admitted the agreement executed by the parties, they also stated that the company failed to attach the curricula to the scholarship agreement, as indicated in the provisions of such agreement.
3. As a result, the courts stated that it was not possible to validly evaluate the type of training or skills provided so that the agreement executed between the employee and the company was considered a scholarship agreement and not a mere training agreement for the benefit of the company, which, during the agreed term, did not assume any legal obligations whatsoever.

In order to limit corporate liability, when executing a scholarship agreement, the following essential aspects must be considered:

- It is necessary to obtain legal advice for the correct wording of the contract, which should comply with the necessary requirements to frame the relation within a scholarship and not an employment relation.

- The purposes included in the scholarship contract must be met, i.e., the employee must always comply with assignments that have an educational purpose.
- The curricula must be attached to the scholarship agreement.
- Companies must have conclusive evidence of the actual existence of the scholarship. To such end, it is convenient to obtain the necessary advice in order to minimize potential labor contingencies.
- Companies must not provide the grantee with any benefits in addition to those provisions included in the scholarship agreement, because it may be considered evidence that could be used against the company in a future claim.
- The grantee's assignments must always go from the easier to the more difficult and have an educational purpose for the benefit of the grantee. If level of the complexity is reversed or omitted, such relation will be considered an employment and not a scholarship relation in a future claim.
- The grantee must be evaluated from time to time according to a set method.
- In general, this type of agreement is intended for students, under 25 years old, with little education and work experience.
- Working hours must be reduced (between 4 to 6 daily hours, twice or three times per week).

Scholarships are non-labor contracts consisting in the commitment by a company to train a grantee in a given trade or profession in order to allow the grantee to obtain a job in the same company or in another one requiring his services.

Even though this type of agreement reduces costs considerably, because it does not have a labor nature, it requires taking certain measures tending to prevent grantees from claiming in court payment of a compensation as if they had been working under an employment relation.

In light of the above, we point out the importance of taking the necessary measures at the start of the relation in order to reduce the possibility of having the scholarship relation considered an employment relation.