Income Sharing Arrangements and Coding Bootcamps: Boom or Bust for the Blue Collar Breadwinner?

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Jonathan F. Harris, *Unconscionability in Contracting for Worker Training*, 72 **Ala. L. Rev.** __ (forthcoming, 2021), available at SSRN.

During the 2020 coronavirus pandemic, many firms turned to remote and computer assisted arrangements to get work done remotely and safely. During the summer, however, jobless claims rose as the economy took a downturn. These economic pressures have driven many workers to seek job training or even re-training to protect themselves from the worst of the recession. Out of desperation, some workers are turning to code academies or bootcamps to learn new skills, while existing employers have in some instances started charging workers for the cost of new training.

In his forthcoming article, *Unconscionability in Contracting for Worker Training*, Jonathan Harris explores the contractual issues that arise when workers or job applicants are asked to pay for their training outside of traditional educational structures. This could arise through a training repayment agreement (TRA), which requires an existing employee to repay the employer a fixed sum expended on training if the worker quits or is fired during a set period of time. This Jot, however, will focus on the other setting in which these non-traditional training arrangements are arising, and which Harris discusses at some length in the second part of his article. These are the so-called Income Sharing Agreements (ISAs), which for-profit code academies use. ISAs are contracts that require the trainee to repay a set percentage of future income in exchange for the tuition that enables them to attend a computer coding academy or bootcamp.

While at first glance this may seem like an positive career opportunity to many blue collar or displaced service industry workers, these arrangements have the potential to become exploitative. Harris's article provides insights into these novel arrangements and he suggests using the lens of unconscionability to analyze both TRAs and ISAs.

Delving deeper into the issue, Harris notes that many coding programs last between three months and one year, but they do not offer a formal degree in computer science. Some target lower-income populations or youth from communities of color. These coding programs may bill themselves as "free upfront," but as they take a percentage of future income, that may be misleading to jobseekers. Harris notes that the terms of the ISAs vary, but some require between six and seventeen percent of income for a period of three to ten years of employment.

Coding bootcamps largely aim their appeal to blue collar and service workers who look to them as a path toward a well-paying job, income stability, and upward mobility. What these trainees might find, however, is not always what is promised. Because these code academies are new, and they are for profit businesses, quality may also vary widely. The financing structure may be opaque and misleading. Harris provides one example of a bootcamp that takes future earnings of $30,600 that would typically cost a few thousand if paid upfront. While some trainees may receive excellent hands on training in coding, other students may find themselves watching publicly available videos on YouTube and be asked to cobble together their own learning. Still others may find that employers want degrees, not bootcamps, and that they are saddled with high debts. The concern is that these kinds of debts set up the modern equivalent of the debt-peonage system.

This is where Jonathan Harris's unconscionability analysis comes into play. While ISAs are yet too new for analysis from courts, Harris describes some key factors to finding an ISA unconscionable, for example: How large is the repayment amount compared to the trainee's future salary; whether the income threshold for repayment is relatively

high; whether the debt can be discharged in bankruptcy; and whether provisions exist for disability or other situations the trainee may face. These are all elements that Harris correctly suggests should be part of any unconscionability analysis of ISAs.

But what of student loan debt, which bears a similar resemblance in that it puts the burden of training all on the student? Harris notes that while student loan debt may be an ongoing problem, at least it is quantifiable, whereas with ISAs, the amount owed is often opaque and it makes it very difficult for the trainee to understand how much their program is worth to them in future earnings and what they will eventually owe. Finally, the article ends with Harris discussing a tripartite solution (workers/unions, employers, and government) working together to put training programs in place that will assist not only the workers and employers who need skills, but also make sure that society benefits from that training and those skills.

Ultimately, in *Contracting for Worker Training*, Jonathan Harris shines a light on novel TRA and ISA contracts. ISA contracts could help some workers upgrade their skills. Unfortunately, as Harris notes, the ISAs could also take advantage of anxious jobseekers. Harris's article is an illuminating and worthwhile read for those interested in the future of work and a novel application of the unconscionability doctrine.

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