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Legislative Update

‘Trapped at Work Act’ Prohibits NY Employers From Requiring Certain Repayments for Early Departures

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On Dec. 19, New York Gov. Kathy Hochul signed into law [Assembly Bill A584C](#), known as the “Trapped at Work Act,” which took effect immediately and amends the New York Labor Law to prohibit the use of certain “stay-or-pay” agreements that require workers to pay their employer if they leave their job before a specified date.

Prohibition of Employment Promissory Notes

The Trapped at Work Act (which adds Article 37, N.Y. Lab. Law §§ 1050–55) prohibits employers from requiring workers or prospective workers to execute an employment promissory note as a condition of employment. Employment promissory notes are defined to include any agreement that requires the worker to repay a sum to the employer if the worker leaves before a stated time. The statutory definition explicitly identifies training reimbursement agreements as covered but is not limited to such arrangements. The law applies to employees, independent contractors, interns and volunteers. It characterizes employment promissory notes as “unconscionable, against public policy, and unenforceable,” because such repayment agreements may have the effect of “trapping” workers in undesirable work environments they would otherwise leave.

Exceptions

The law does not apply to agreements that require the repayment of “any sums *advanced* to such worker” (provided that sums are not advanced to pay for training), among other limited exceptions. Although the exact meaning of this language is somewhat unclear, “any sums advanced to such worker by the employer” appears to be broader than traditional advances of salary or wages. Thus, the statute appears to permit repayment agreements related to any sum paid to the employee, including sign-on bonuses, unless the money is intended for training. Regulations to be promulgated by the New York Department of Labor may clarify this exception. The law also excludes agreements that require payment for any property sold or leased by the employer to the worker, agreements that require education personnel to comply with the terms and conditions of sabbatical leaves, and agreements entered into as part of a collective bargaining agreement.

Gov. Hochul’s approval memorandum explains that “[t]raining repayment agreement provisions (‘TRAPS’) and other forms of stay-or-pay contracts force employees to stay in jobs they do not want under threat of financial penalties.” She notes the law’s ambiguity, however, and says it is not intended to prohibit

“certain voluntary tuition assistance programs that provide real benefits to their participants.” The memorandum adds that there is an agreement with the legislature to address these concerns in the upcoming legislative session.

Effect on Employers

Given the potential ambiguity in the scope of the Trapped at Work Act’s exceptions, New York employers should be cautious when requiring workers to make any repayments because of early departure. Violations carry fines of up to \$5,000 for each worker or prospective worker required to execute a prohibited agreement. The law does not expressly create a private right of action, but employers that sue workers to enforce prohibited agreements may be liable for the workers’ attorney’s fees. Under Section 3 of the Act, the law took effect upon signing, so employers should immediately review their current agreements and practices to ensure compliance.

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