Patterson Belknap

Employment Law Alert
November 6, 2026

New York Restricts "Pay or Stay" Agreements Under the Trapped at Work Act

New York employers will soon face new restrictions on agreements requiring employees to repay certain amounts if their employment ends before a specified period of time. New York's Trapped at Work Act (the "Act") generally prohibits employers from requiring employees or prospective employees, as a condition of employment, to enter into so-called "pay or stay" agreements, subject to exceptions for certain educational expenses, bonuses, relocation assistance, and other incentive payments.

Originally enacted in December 2025 and amended in February 2026, the Act left some uncertainty as to whether its effective date would be December 19, 2026 or February 13, 2027. On October 22, 2026, the New York State Department of Labor ("NYSDOL") issued guidance confirming that the Act will take effect on December 19, 2026, but will apply only to new agreements or amended terms in existing agreements entered into on or after that date, and providing further clarification regarding the types of repayment arrangements permitted under the Act.[1]

With the Act set to take effect shortly, employers should review their standard forms of employment-related agreements, including offer letters, employment agreements, bonus and retention arrangements, relocation agreements, and tuition and training reimbursement agreements, to identify provisions that may require modification going forward.

Prohibition of "Employment Promissory Notes"

The Act prohibits "[a]ll private and public sector employers in New York State"[2] from requiring employees or prospective employees to execute an "employment promissory note" as a condition of employment. An employment promissory note is defined as "any instrument, agreement, or contract[ual] provision" requiring an employee to pay the employer, or its agent or assignee, a sum of money if the employee's employment relationship ends before a specified period of time. Although the Act deems such notes "unconscionable, against public policy, and unenforceable," it expressly provides that the invalidity of a prohibited provision does not affect the enforceability of the remainder of an agreement in which it appears.

Importantly, the NYSDOL's guidance clarifies that repayment arrangements fall outside the Act's prohibition if they are genuinely voluntary and not a condition of accepting or continuing employment. An arrangement is voluntary for this purpose if an employee may decline it without jeopardizing the opportunity to begin or continue employment. For example, the NYSDOL explains that an employer may offer an employee the choice between receiving an upfront payment tied to future performance targets, subject to repayment if the employee leaves before satisfying those targets, or deferring payment until the targets are met. Because the employee may decline the upfront payment without affecting employment, the repayment obligation is permissible even if it does not fall within one of the Act's express statutory exceptions.

Exceptions to the Prohibition

Even where a repayment obligation would otherwise constitute a prohibited employment promissory note, the Act expressly permits certain categories of repayment agreements, subject to the requirements discussed below.

---

[1] N.Y. State Dep't of Lab., *The Trapped at Work Act*, https://dol.ny.gov/legal/taw (last visited Nov. 6, 2026).
[2] *Id.*

1. Bonuses, Relocation Assistance, and Other Incentive Payments

The Act permits employers to require repayment of financial bonuses, relocation assistance, and other non-educational incentives, payments, or benefits that are not tied to specific job performance, subject to certain limitations.

In particular, an employer may require an employee to repay a signing bonus, relocation assistance, or similar payment if the employee voluntarily resigns before completing an agreed-upon period of employment or if the employer terminates the employee for misconduct. However, the employer may not require repayment if it terminates the employee for a reason other than misconduct or if it misrepresented the duties or requirements of the position to the employee.

Thus, an agreement requiring an employee to repay a signing bonus upon voluntary resignation before a specified date generally remains permissible. By contrast, the employer could not require repayment under this exception if it eliminated the employee's position before that date.

The NYSDOL's guidance clarifies that "misconduct" includes behavior detrimental to the employer's interests or conduct that violates a reasonable condition of employment, including conduct that an employer's policies identify as grounds for termination for cause. The guidance also confirms that the statutory reference to an employee being "terminated" means an employer-initiated separation, rather than a voluntary resignation.

2. Tuition and Other Educational Repayment Agreements

The Act permits employers, subject to certain conditions, to require employees to repay tuition and other expenses incurred in obtaining a "transferable credential" if they leave employment before completing an agreed-upon period of service. A transferable credential includes a degree, diploma, license, certificate, or documented evidence of skill proficiency or course completion that is widely recognized by employers in the relevant industry as a qualification for employment or that demonstrably enhances the employee's employability with other employers.

The definition excludes employer-specific or nontransferable training, including instruction concerning an employer's proprietary processes, systems, software, equipment, or internal policies. It also excludes training that does not qualify an employee for a new occupational title, classification, or industry-recognized credential, but instead consists of variations of general processes already known in the relevant industry. Training mandated by federal, state, or local law to maintain workplace safety, including OSHA certifications, sexual harassment prevention training, and diversity training, is likewise excluded.

An agreement requiring repayment of tuition or other expenses associated with obtaining a qualifying transferable credential is permissible only if it satisfies all five of the following requirements:

i. **Separate written agreement.** The repayment obligation must be set forth in a written contract offered separately from any employment contract.

ii. **Voluntary credential.** Obtaining the credential cannot be a condition of employment.

iii. **Disclosure and limitation of repayment amount.** The agreement must specify the repayment amount before the employee enters into the contract, and that amount cannot exceed the employer's actual costs for tuition, fees, and required educational materials associated with the credential.

iv. **Prorated repayment.** The repayment amount must be reduced proportionately over the required period of employment, and the agreement cannot impose an accelerated repayment schedule upon the employee's separation from employment.

v. **Limitations following termination.** The agreement cannot require repayment if the employer terminates the employee's employment, except for misconduct.

The NYSDOL's guidance further clarifies that examination and licensing fees may qualify as reimbursable expenses when incurred in obtaining a transferable credential.

3. Other Permitted Agreements

The Act identifies several additional categories of permitted agreements. These include agreements requiring employees to pay for property voluntarily sold or leased to them by the employer; agreements requiring educational personnel to comply with the terms of employer-provided sabbatical leave; and agreements entered into as part of a program agreed upon by an employer and its employees' collective bargaining representative.

Enforcement and Penalties

The Act does not expressly create a private right of action. Instead, NYSDOL is responsible for enforcing the Act and may impose civil penalties ranging from $1,000 to $5,000 per violation. However, if an employer sues an employee to enforce a prohibited employment promissory note, and the employee successfully defends against the lawsuit, the employee may recover attorneys' fees.

Takeaways for Employers

With the Act set to take effect on December 19, 2026, New York employers should review their standard forms and planned repayment arrangements to ensure compliance with the new requirements. In particular, employers should consider the following steps:

1. **Identify potentially affected agreements.** The Act does not require employers to modify agreements entered into before December 19, 2026, solely because their repayment obligations or required service periods extend beyond that date. Employers should, however, review their standard forms for future use and any repayment arrangements that will be entered into or amended on or after the effective date of the Act, including offer letters, employment agreements, signing and retention bonus arrangements, relocation agreements, or lease agreements, tuition and training reimbursement agreements, and incentive compensation plans.
2. **Review bonus and relocation repayment provisions.** Ensure that new agreements do not require repayment following an employer-initiated termination for reasons other than misconduct or where the employer misrepresented the duties or requirements of the position.
3. **Review tuition and training repayment agreements.** Confirm that new agreements requiring repayment of educational expenses are limited to qualifying transferable credentials and satisfy the Act's requirements, including a separate written contract, advance disclosure of repayment amounts, prorated repayment obligations, and permissible termination triggers.
4. **Consider voluntary arrangements and repayment methods.** Evaluate whether certain benefits or advances can be offered on a genuinely voluntary basis, without affecting an employee's ability to begin or continue employment if the employee declines.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

Lisa E. Cleary	212.336.2159	lecleary@pbwt.com
Millie Warner	212.336.2377	mwarner@pbwt.com

To subscribe to any of our publications, call us at 212.336.2000, email mktg@pbwt.com or sign up on our website, https://www.pbwt.com/subscribe/.

This publication may constitute attorney advertising in some jurisdictions.
© 2026 Patterson Belknap Webb & Tyler LLP

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036–6710
212.336.2000
www.pbwt.com