

## CLIENT ALERT

# California And New York Target “Stay-Or-Pay” Contract Provisions

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California and New York recently passed legislation concerning financial penalties that may be imposed on workers at the end of the working relationship. Though similar in purpose, each of the newly enacted laws differs with respect to signing bonus repayment provisions. Under California law, an employer may only clawback a signing bonus at the end of the working relationship if the bonus terms satisfy certain enumerated requirements. However, under New York law, employers generally cannot clawback signing bonuses at the end of the working relationship, although doing so may be permissible if the bonus is structured as a bona fide advance. Critically, under both laws, it is unlawful to require workers to agree to unenforceable repayment provisions even if the employer does not attempt to enforce them.

### California

California recently enacted [Assembly Bill \(“AB”\) 692](#), which restricts an employer’s ability to impose financial penalties on, or recover costs from, a worker for leaving a job. AB 692 will impact agreements concerning signing and retention bonuses, relocation reimbursements, and tuition assistance, among others.

The new bill, which becomes effective on January 1, 2026, adds two new statutory provisions – Labor Code § 926 and Business and Professions Code § 16608 – and applies to all California employers. Importantly, AB 692 does not apply retroactively and only covers contracts entered into on or after January 1, 2026.

### What AB 692 Prohibits

AB 692 makes it unlawful for an employer to include in any employment contract, or to require a worker to execute, as a condition of employment or a work relationship, a contract that includes a term that does any of the following:

- Requires the worker to pay an employer, training provider, or debt collector for a debt if the worker’s employment or work relationship with a specific employer terminates.
- Authorizes the employer, training provider, or debt collector to resume or initiate collection of, or end forbearance on, a debt if the worker’s employment or work relationship with a specific employer terminates.
- Imposes any penalty, fee, or cost on a worker if the worker’s employment or work relationship with a specific employer terminates (including the repayment of any amounts previously paid to the worker that were subject to continued service).

### Exceptions To AB 692

AB 692 contains exceptions, including for certain signing bonuses. Specifically, it does not prohibit contracts that provide for the payment of a discretionary or unearned monetary amount at the outset of employment that is not tied to specific job performance and that requires repayment of such amount upon the individual leaving service with the employer, provided that all of the following conditions are met:

- The terms of any repayment obligation are set forth in a separate agreement from the primary employment contract.
- The employee is notified that they have the right to consult an attorney regarding the agreement and are provided with at least five business days to obtain advice of counsel prior to executing the agreement.
- Any repayment obligation for early separation from employment is not subject to interest accrual and is prorated based on the remaining term of any applicable retention period, which may not exceed two years from the receipt of payment.
- The worker has the option to defer receipt of the payment to the end of a fully served retention period without any repayment obligation.
- Separation from employment before the end of the retention period is at the sole election of the employee, or at the election of the employer for misconduct.

Other statutory exceptions include:

- A contract entered into under any loan repayment assistance program or loan forgiveness program provided by a federal, state, or local governmental agency.
- A contract related to enrollment in an apprenticeship program approved by the Division of Apprenticeship Standards.
- A contract related to the repayment of the cost of tuition for a transferable credential, provided that certain requirements are met.
- A contract related to the lease, financing, or purchase of residential property, including, but not limited to, a contract pursuant to the California Residential Mortgage Lending Act.

#### Rights And Remedies

AB 692 creates a private right of action, allowing an aggrieved worker or worker representative to bring a civil action on behalf of that worker, other similarly situated persons, or both, in any court of competent jurisdiction. An employer found to have violated AB 692 is liable for actual damages sustained by the worker or workers on whose behalf the case is brought, or \$5,000 per worker, whichever is greater, in addition to injunctive relief, and reasonable attorney's fees and costs. AB 692 also makes clear that the remedies and penalties established by the new law are cumulative and do not supersede or limit the rights, remedies, or penalties under other laws, such as Section 16608 of the Business and Professions Code and California's Unfair Competition Law (commencing with Labor Code § 17200).

#### New York

On December 19, 2025, Governor Hochul signed the [Trapped At Work Act \(the “Act”\)](#). The Act, which applies to all New York employers and became effective immediately upon signing, does not apply retroactively and only covers contracts entered into on or after December 19, 2025.

#### What The Act Prohibits

The Act prohibits an employer from requiring, “as a condition of employment, any worker or prospective worker to execute an employment promissory note.” The definition of “employment promissory note” goes beyond the common meaning of the term and includes “any instrument, agreement, or contract provision that requires a worker to pay the employer, or the employer’s agent or assignee, a sum of money if the worker leaves such employment before the passage of a stated period of time.”

#### Exceptions To The Act

The Act exempts agreements which:

- Require the worker to repay to the employer any sums advanced to such worker by the employer, unless such sums were used to pay for training related to the worker’s employment with the employer;
- Require the worker to pay the employer for property it has leased or sold to the worker;
- Require educational personnel to comply with the terms or conditions of employer-granted sabbatical leave; or
- Are part of the workers’ collective bargaining agreement.

While the law generally prohibits provisions that require workers to pay back signing and retention bonuses at the end of the working relationship, it appears that such provisions may be permissible if such bonuses are structured as bona fide advances. However, given the ambiguity and brevity of the statutory language, and the absence of any guidance, regulations, or judicial decisions interpreting the law, it is unclear the extent to which, and under what circumstances, repayment of signing and retention bonuses structured as advances will withstand challenges.

#### Rights And Remedies

Although the Act does not create a private right of action, a worker who is sued by an employer in an effort to enforce an unlawful agreement under the Act will be entitled to attorney’s fees upon a successful defense. If an employer is found to have violated the Act, the employer will be subject to a fine of between \$1,000 to \$5,000 per violation, with each worker who executes an agreement in violation of the Act or against whom an employer seeks to enforce such an agreement shall be treated as a separate violation.

#### Takeaways

In light of AB 692 and the Act, employers should review their form employment or service provider agreements that impose financial penalties on or provide for recovery of costs from workers at the end of the working relationship, however they are worded. Employers who regularly use signing or retention bonuses that are subject to repayment, in particular, should evaluate their recruiting and retention strategies to ensure compliance with AB 692 and the Act. Finally, employers should keep an eye out for any regulations or guidance issued with respect to these new laws.

**If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.**

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