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TRAP for the Unwary Employer: Requiring Employees to Pay Back Mandatory Training is Unlawful

Client Alert

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In recent years, employers have started utilizing what some call Training Repayment Agreement Provisions (or TRAPs). According to an MSN Article, the Cornell Survey Research Institute states that almost 10% of American workers surveyed in 2020 reported they were covered by a TRAP.^[1] Ironically, while TRAPs sound advantageous for employers, they are actually a trap for potential liability.

Under Michigan's Payment of Wages and Fringe Benefits Act (WFBA), employees cannot be required, as a condition of employment, to reimburse an employer for employer-mandated training after he or she resigns. The Michigan Supreme Court has found that this law is designed to "prevent kickbacks or payments of any kind to an employer in return for employment or its continuation." *Sands Appliance Servs., Inc. v. Wilson*, 463 Mich. 231, 241, 615 N.W.2d 241, 247 (2000).

For employers outside of Michigan, TRAPs may or may not be unlawful under various state laws. In addition, federal law is still a barrier to TRAPs requiring repayment of mandatory training. The Fair Labor Standards Act (FLSA) is the federal law that governs workplace requirements relating to pay, overtime, etc. Under the FLSA, training time is compensable, and cannot be later recouped through a TRAP, unless all of the following are met: the training must be outside of normal hours; the training must be voluntary; the training must not be job related; and no other work is concurrently performed while attending the training.

Notably, these rules are designed to prevent kickbacks for employer-required training. Tuition reimbursement programs or reimbursement for voluntary training that meet the above FLSA factors are lawful. However, because of the legal complexities involved, Employers should contact their labor and employment counsel for advice before seeking to recover compensation paid

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[1] Diane Bartz, *More U.S. companies charging employees for job training if they quit*, MSN (Oct. 17, 2022), <https://www.msn.com/en-us/news/us/more-us-companies-charging-employees-for-job-training-if-they-quit/ar-AA132ZnF>