STATE OF NEW YORK

6794

2023-2024 Regular Sessions

IN SENATE

May 10, 2023

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the "trapped at work act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "trapped at work act".

§ 2. The labor law is amended by adding a new article 36 to read as follows:

ARTICLE 36

TRAPPED AT WORK ACT

Section 1050. Statement of public policy.

1051. Definitions.

1052. Scope.

1053. Prohibiting the use of employment promissory notes and other similar provisions.

1054. Enforcement.

1055. Rules.

1056. Savings clause.

§ 1050. Statement of public policy. Workers' ability to freely change jobs is critical to their economic liberty as well as to creating a thriving and innovative economy in the state of New York. Additionally, a tenet of worker protections and empowerment is that the cost of any training required by an employer to perform a job should be borne by the employer, who ultimately stands to financially benefit from a well-trained workforce. Employment provisions that have the effect of indebting workers to their former employers upon separation for the cost of training have the effects of reducing those workers' professional mobility, creating obstacles toward financial security, and chilling the state economy. It is in the interest of individual workers and of the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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state to protect workers from these employment-based debts and to align the costs of operating a business with its financial benefits by ensuring employers maintain expenses for training they require for their workers.

§ 1051. Definitions. For purposes of this article:

1. "Employer" means an individual, partnership, association, corporation, limited liability company, trust, government or government subdivision, or any organized group that hires or contracts with a worker to work for the employer. For the purposes of this article, this term shall also include any subsidiary of an employer and any individual, partnership, association, corporation, limited liability company, trust, government or government subdivision, or any organized group associated with an employer that provides training to workers.

2. "Worker" means an individual who is permitted to work for or on behalf of an employer. The term "worker" includes an employee, independent contractor, extern, intern, volunteer, apprentice, sole proprietor who provides a service or services to an employer or to a client or customer of an employer on behalf of such employer, and an individual who provides service through a business or nonprofit entity or association. "Worker" does not include an individual, even if the individual performs incidental service for the employer, whose sole relationship with the employer is as a vendor of goods.

3. "Employment promissory note" means any instrument, agreement, or contract provision that requires a worker to pay the employer, or his or her agent or assignee, a sum of money if the worker leaves such employment before the passage of a stated period of time. "Employment promissory note" includes any such instrument, agreement, or contract provision which states such payment of moneys constitutes reimbursement for training provided to the worker by the employer or by a third party.

§ 1052. Scope. 1. This article supersedes common law only to the extent that it applies to an employment promissory note but otherwise does not affect principles of law and equity consistent with this article.

2. The rights and remedies provided pursuant to this article shall be in addition to, and shall not supersede, any other rights and remedies provided by statute or common law.

§ 1053. Prohibiting the use of employment promissory notes and other similar provisions. 1. Beginning on the effective date of this article, no employer may require, as a condition of employment, any worker or prospective worker to execute an employment promissory note. The execution of an employment promissory note as a condition of employment is unconscionable, against public policy, and unenforceable, and any such note shall be void. If any such note is part of a larger agreement, the invalidity of such note shall not affect the other provisions of such agreement.

2. Nothing in this section shall prohibit or render void or unenforceable any agreement between a worker and an employer that:

(a) requires 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;

(b) requires the worker to pay the employer for any property it has sold or leased to such worker;

(c) requires educational personnel to comply with any terms or conditions of sabbatical leaves granted by their employers; or

(d) is entered into as part of a program agreed to by the employer and its workers' collective bargaining representative.

§ 1054. Enforcement. 1. Any employer found to have violated this article shall be fined by the commissioner not less than one thousand dollars and not more than five thousand dollars for each violation. Each worker or prospective worker whom an employer required to execute an employment promissory note or against whom an employer seeks to enforce such a note shall constitute a separate violation of this article.

2. Any worker or prospective worker for whom an employer requires execution of an employment promissory note as a condition of employment or against whom an employer seeks to enforce such a note may bring an action against such employer to recover actual damages or five thousand dollars, whichever is greater, and injunctive relief. In the event of a successful action, the court shall award any plaintiff reasonable costs and attorney fees.

§ 1055. Rules. The commissioner may promulgate rules and regulations necessary to carry out the provisions of this article.

§ 1056. Savings clause. If any portion of this article or the application thereof to any person, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

§ 3. This act shall take effect immediately.