

AB 692 “ANTI-TRAP” LEGISLATION AND IMPLICATIONS FOR HEALTHCARE EMPLOYMENT RECRUITMENT AND RETENTION PRACTICES

Employers who require employees to reimburse them at termination for such things as training programs and signing bonuses need to be aware of [AB 692](#), which will apply to such agreements entered into on or after January 1, 2026. Because these types of agreements are common in healthcare, the new laws may significantly impact recruiting and retention for employers such as healthcare systems and medical groups.

AB 692, dubbed the “anti-TRAP” bill (“TRAP” is the acronym for “Training Repayment Agreement Provisions”), was intended to address employee training programs that require employees to repay employers large sums of money if they end employment within a specified period. The legislation, which adds section 16608 to the Business and Professions Code, is intended, like California’s ban on noncompete agreements, to further the goal of employee mobility. TRAPs or “stay-or-pay” provisions are sometimes referred to as de facto non-compete provisions because they create a large financial burden if an employee changes jobs.

AB 692 was sponsored by, among others, the California Nurses Association (and opposed by healthcare organizations, such as the California Hospital Association). According to the authors, a 2022 report by the Student Borrower Protection Center found that three industries – healthcare, trucking and retail – were heavily reliant on TRAPs.ⁱ A 2022 survey of registered nurses, determined that almost 40% who had started working in the past decade were impacted by TRAPs for the new graduate residency programs.ⁱⁱ Proponents of the bill also cited a 2023 report by the Consumer Financial Protection Bureau finding that debts ranged from \$4,000 to \$30,000.

The bill, however, is not limited to training reimbursement provisions. It will impact a large variety of common employee reimbursement obligations, including relocation bonuses, signing bonuses and agreements to reimburse immigration or visa related expenses. In addition, given the overly broad language, the bill has the potential for being applied in other contexts.

Beginning January 1, 2026, subject to limited exceptions, section 16608 will make it unlawful to include in any employment agreement or as a condition of employment a provision that:

- (A) Requires the worker to pay an employer (or others, such as training provider or debt collector) for a debt if the worker’s relationship with a specific employer terminates.
- (B) Permits an employer (or certain others) to resume or initiate collection of a debt, or end forbearance of collection if the worker’s employment terminates.
- (C) Imposes any penalty, fee, or cost on a worker if the worker’s employment terminates.

The law has four exceptions. The first is for contracts entered into under a loan repayment assistance or forgiveness program provided by a government agency.

Second, contracts for the reimbursement of tuition are still permissible if they are for a transferable credential and meet the following requirements:

- (1) The contract is separate from any employment contract.
- (2) The contract does not require the credential as a condition of employment.
- (3) The contract specifies the amount of repayment before the worker signs it and the amount does not exceed the employer's cost.
- (4) The contract has a prorated repayment amount covering any required period of employment, the repayment is proportional to that period and is not subject to an accelerated payment schedule if the worker separates from employment.
- (5) Finally, the contract does not require repayment if the worker is terminated, unless the worker is terminated for misconduct.

This exception is potentially inconsistent with existing Labor Code section 2802.1 which addresses employer-provided or required training programs for employees providing direct patient care for general acute care hospitals. Section 2802.1 clarifies that such programs must be paid by the employer pursuant to Labor Code section 2802 unless they satisfy requirements for licensure necessary to legally provide direct patient care or the employee voluntarily participates in the program. Thus, section 2802.1 permits employers to require reimbursement when the training is for a credential that is a legal condition of the job whereas the AB 692 exception does not permit reimbursement when the credential is a condition of employment. However, certain types of training programs (for example, for graduate nursing degrees that are not a condition of current employment) could require reimbursement and comply with both AB 692 and section 2802.1.

The third exception is for contracts for enrollment in an apprenticeship program approved by the Division of Apprenticeship Standards.

Finally, and of significance to many healthcare (and other) employers, contracts for the "receipt of a discretionary or unearned monetary payment, including a financial bonus, at the outset of employment that is not tied to specific job performance" will only be permitted if the following requirements are met:

- (1) The repayment terms are in an agreement separate from the primary employment agreement.
- (2) The employee must be notified that they have the right to consult an attorney and given at least five days to consult.
- (3) Any repayment provision triggered by early separation from employment is not subject to interest accrual, is prorated based on the remaining term of any retention period, and the retention period cannot exceed two years from the date payment was received.
- (4) The worker has the option to defer payment until the end of the retention period and thus avoid any repayment obligation.

(5) Separation from employment before the end of the retention period was either at the sole election of the employee, or by the employer for misconduct.

This fourth exception will continue to permit relocation cost and sign-on bonuses to be subject to reimbursement, provided they comply with the above five requirements. Thus, for example, employers who currently specify a three year or longer repayment obligation will need to switch to two years.

Under the first and fourth exceptions, employers can only require reimbursement when an involuntary termination is for “misconduct.” AB 692 defines “misconduct” consistent with section 1256 of the Unemployment Insurance Code. Thus, an employer will need to show “substantial evidence of deliberate, willful and intentional disobedience”ⁱⁱⁱ on the part of the employee and “mere inefficiency, unsatisfactory, conduct, inadvertencies or ordinary negligence or good faith errors in judgment or discretion”^{iv} will not be sufficient. Employers who have opposed applications for unemployment benefits know this is a high burden.

This also means that employers cannot contractually control the circumstances under which repayment is required. While many employers currently require repayment if there is a termination “for cause” as defined in the agreement, these definitions will not override the need to show misconduct as defined for section 1256.

It is unclear if AB 692 permits agreements for the reimbursement of immigration or visa related expenses. Such agreements are clearly covered in the definition of “penalty, fee or cost” and the prohibition against such items. However, it is unclear if such expenses would fall under the exception for “the receipt of discretionary or unearned monetary payment at the outset of employment that is not tied to specific job performance” since the employee does not receive, for example, fees paid for an H-1B visa. To the extent that healthcare employers are still contemplating hiring foreign workers, they should consult with immigration counsel on provisions to potentially recoup immigration-related costs in the event of early separation.

The overly broad language of AB 692 also creates opportunities for unforeseen applications, particularly in light of the private right of action provision (discussed below). For example, it is not uncommon for clinicians to be paid based on production, including with a recoverable advance that the employee is required to repay upon separation. Such provisions would appear to be covered by AB 692 and are not clearly excepted. The only potentially applicable exception, for “discretionary or unearned payment,” only applies to those payments that are not tied to a specific job performance, which would appear to exclude production pay.

Similarly, since the bill defines “debt” to include “personal property,” there is a question as to whether it can be interpreted to cover the laptop or other equipment given to employees that is supposed to be returned upon separation. While it does not appear that the bill was intended to apply to employer property, the potential for creative expansion of the language is a concern in light of the private right of action provision.

Business and Professions Code section 16608 provides that prohibited contracts are void against public policy. However, the real enforcement teeth are in newly enacted Labor Code section 926 which creates a private right of action that employees may bring individually and on behalf of others similarly situated. Employers or other persons found to be in violation of section 16608 will be liable for actual damages or \$5,000 per worker, whichever is greater, injunctive relief, and of course, attorney's fees and costs.

While AB 692 does not specifically address PAGA (Private Attorneys General Act)^v, it appears that agreements violating the new laws would also be subject to PAGA actions and civil penalties, in addition to statutory penalties under the private right of action provision. Labor Code section 432.5, which makes it unlawful for an employer to require an employee to agree in writing to a term or condition which the employer knows is prohibited by law, would provide the basis for a PAGA claim.

AB 692 is limited to agreements entered into on or after January 1, 2026. Thus, employers will not be required to change pre-existing agreements. However, employers who currently utilize training repayment agreements or relocation or sign-on bonuses with repayment provisions may need to revise their recruiting and retention practices and agreements before the end of 2025.

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ⁱ Student Borrower Protection Center (July 2022), "Trapped at Work." https://protectborrowers.org/wp-content/uploads/2023/12/stay-or-pay-compendium_12-2023_FINAL.pdf

ⁱⁱ National Nurses United (Dec. 2022), "Caught in a TRAP," National Nurse Magazine.

<https://nnumagazine.uberflip.com/i/1489186-national-nurse-magazine-october-november-december-2022/19?>

ⁱⁱⁱ *Robles v. Employment Development Dept.* (2012) 207 Cal.App.4th 1029, 1035.

^{iv} *American Federation of Labor v. Unemployment Insurance Appeals Board* (1994) 23 Cal.App.4th 51, 59.

^v Labor Code section 2699 *et seq.*