

§ 495r. STAY-OR-PAY PROVISIONS; RESTRICTIONS; EXCEPTIONS; NOTICE; EMPLOYEE RIGHTS

- (a) As used in this section, "stay-or-pay provision" means an agreement between an employer and an employee that requires the employee to pay the employer upon the employee's separation from employment. Stay-or-pay provisions take a variety of forms, including training repayment provisions, educational repayment contracts, quit fees, damages clauses, sign-on bonuses or other types of cash payments tied to a mandatory stay period, and other contracts under which an employee must pay an employer in the event that the employee voluntarily or involuntarily separates from employment.
- (b) It shall be an unlawful employment practice for an employer to require an employee to pay the employer, pursuant to a stay-or-pay provision, following an employee's separation from employment.
- (c) Notwithstanding subsection (b) of this section, a stay-or-pay provision shall not be an unlawful employment practice if:

(1) It relates to repayment of the cost of tuition to earn a degree or credential:

(A) offered by a third-party institution that has satisfied all applicable accreditations and state authorization requirements to operate,

(B) is not a requirement for the employee's current employment with the employer, and

(C) is transferable and useful for employment outside of the employer requiring repayment;

(2) The provision is

(A) offered to the employee separately from any employment agreement, and

(B) not a condition of employment voluntarily agrees to the provision in exchange for a benefit;

(3) The repayment amount is reasonable and does not exceed the cost to the employer of the degree or credential benefit received by the employee;

(4) The repayment amount is specific and provided to the employee before the employee agrees to the provision;

(5) The length of the stay period associated with the provision is reasonable based upon a number of factors, including:

(B) The cost of the benefit bestowed;

(C) The value of the benefit to the employee; and

(D) Whether the repayment amount decreases over the course of the stay period proportional to the total repayment amount and the length of the stay period; and

(6) The provision does not require repayment if the employee is:

(A) terminated without cause,

(B) Wrongfully terminated,

(C) Constructively terminated,

(D) Laid off as the result of restructuring or downsizing.

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- (d) For existing stay-or-pay provisions that violate subsection (b) of this section, the employer must notify each employee or former employee who is subject to the provision that it is void and legally unenforceable. Notice shall be in the form of a written individualized communication addressed to the employee or former employee and shall be delivered to the last known address and email address of the employee or former employee.
- (e) An employer shall not retaliate against an employee who exercises or attempts to exercise the rights provided under this section, including opting not to enter into a stay-or-pay provision. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

Commented [1]: To be consistent with the rest of this paragraph and to ensure all affected persons are notified.