



Trading Secrets

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Colorado Amends Non-Compete Law To Address Potential Abuses of Training Repayment Agreement Provisions (TRAPS)

By Robyn Marsh, Marcus Mintz & Michael Wexler on June 14, 2024



On May 31, 2024, the Governor of Colorado signed House Bill **24-1324**, titled “Attorney General Restrictive Employment Agreements,” putting into place a law to toughen protections for employees who are subject to abusive contracts ostensibly requiring repayment to employers for education and training expenses upon termination of employment, commonly referred to as “TRAPs” (Training Repayment Agreement Provisions). This new law is expected to go into effect August 7, 2024.

This amendment is following the trend of state crackdowns on the use of post-employment restrictions with employees, and more recently, a **rule** adopted by the FTC which bans the use of non-competes nationwide with limited exceptions. Previously, in August **2022**, Colorado enacted additional amendments to its existing laws further restricting non-competition and non-solicit provisions in employment agreements, introducing income threshold requirements, strict notice provisions, and harsh monetary penalties for failure to comply with the law’s requirements.

While the general concept of having an employee repay costs associated with specialized training—distinct from standard, on-the-job training—before the employer can realize the return on its investment is not inherently unlawful, Colorado’s newest law attempts to curb potential abuses by employers who use TRAPs to exact repayments or employ penalties that are not reasonably tethered to the actual training expenses incurred by the employer. Such overreaches typically present when an employer (a) attempts to collect amounts in excess for the investment cost in training the employee, (b) seeks repayment well after the training was completed and therefore, investment realized, (c) demands repayment where training provided did not result in transferrable skills to another employer and/or do not lead to certification for the employee, or (d) imposes burdensome repayment terms.

Colorado allows TRAPS within certain parameters, including that the training is separate and apart from typical on-the-job training, the costs are reasonable, and the recovery by the employer decreases over the term of employment as the employer recoups the initial investment made. The new Colorado law expands upon previous restrictions for TRAPs, and increases penalties for overbroad or abusive any agreements that violate the law.

Significantly the new bill:

- Considers TRAPs to be a “consumer credit sale” under Colorado Consumer Credit Code (similar to student loans), which imposes specific requirements and enforcement mechanisms;

- Grants the Attorney General enforcement authority and the ability to promulgate rules to implement and enforce the new bill;
- Provides that the Attorney General, or an aggrieved worker, may recover three (3) times the amount of the attempted recovery by the employer, *in addition to* the \$5,000 penalty provided by existing law, *plus* attorneys' fees, costs, and interest.

This new law significantly increases the risk for employers who use TRAPS and acts as a rather fervent disincentive for employers to include draconian repayment provisions that are not reasonably tied to the education or training provided to the employee. Employers who seek to include repayment provisions in their employment agreements for Colorado employees should carefully review this law, as well as the Colorado statute governing non-competes Colo. Rev. Stat. § 8-2-113, to ensure compliance and to avoid severe penalties.

Finally, employers should consider the recent rule adopted by the FTC (effective September 4, 2024) banning non-competes, but for limited exceptions, and its language applicable to training and training reimbursement that may, in certain circumstances, ban TRAPS if they function as non-competes. And employers should assess the viability of training programs and the cost of such programs under the FTC rule if the benefits to an employer for such investment cannot be reasonably realized and/or violate this new Colorado law.