Investing in Employees Amidst 2026 Legal Changes

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger with attorneys at Offit Kurman, and we're starting the year off. It's 2026, we're in January. And obviously everyone's been looking at, alright, well what were new laws that were enacted last year? What's ahead in 2026?

What are the trends? What's going on? And I know that, in Maryland in particular, the legislative session just started. While we're all getting caught up on what changed to 2025 and what we need to be doing in 2026, the legislature is off, and running and starting to look at what they're gonna be considering this year.

In the early stages, just started. But one thing I know that, we've been seeing kind of pop up in some other jurisdictions, not in Maryland specifically but places like California and New York, are stay or pay restrictions. These are targeting payback [00:01:00] laws, or payback policies I should say, where employees have to pay something back if they leave.

So something that employers use often. So, Russell what should people should be thinking about in this regard?

Russell Berger: Yeah, so if you kinda rewind OK at Work episodes back to like the summer of 2024 when the federal government was targeting non-competes. And we probably talked about this before then too, but one of the things we raised as, an alternative for employers in addition to, non-solicit provisions and those sorts of things were, different reimbursement programs. So for example, I think most people are familiar with the tuition reimbursement program, which means, the employer pays a certain amount for the tuition and, as the employee stays a certain amount of time after the conclusion of that class or that program that reimbursement obligation gets forgiven.

And, the employer ends up just, having paid for it. And in return they got, a year or two years worth of work outta the employee. And there are different iterations of that in terms of like training agreements [00:02:00] and, we'll put you in this program. We'll spend $5,000 to send you wherever to get a week's worth of training.

But you gotta stay here a year if we're gonna invest in you. Those sorts of programs. And what we're seeing as a little bit of a growing trend, and it may come to other states now too is, laws that prohibit the reimbursement of those training expenses post-employment.

So, the legislative acronym is TRAP, training, repayment, agreement, provisions. And the inference from these legislatures is that it traps folks and their job, some may argue it creates an incentive for employers to invest in their employees. But, to these legislatures, they're traps.

But something that we have to watch out for and be mindful of and be ready to pivot to alternative ways of accomplishing the same things. 'cause as an employer, presumably you're still going to want to invest in your employees. It's good for your business, but it might change how you do it and what protections you put in place.

If these laws come to your state or states where you've got employees working.

Sarah Sawyer: Yeah, and I think a lot [00:03:00] of, obviously employers at this point have employees working in different states. And whenever we start to see a trend like this that, there's a couple states that are starting to look at this or really starting to implement these types the changes, other legislatures are looking at it and they'll start studying that.

And so it's not anything that I, at least at this point know to becoming or being examined at the Maryland level, but yeah, I think other states will be considering it as well. It's just something that, it's been in the news, it's been popping up here and there. And so it's definitely something to monitor, especially if you operate in multiple states, to see, where it's coming, what's happening, what's going on with this trend.

And then, 'cause each state is obviously gonna have different thoughts around it as well and what it covers and what's exempt from it. I know for some states, like employee loans, like if you give an employee obviously like a loan or an advance on wages or something like that, that, that might not be covered.

There's gonna be a lot of nuance there. So, just like anything that gets handled at the state level, it's gonna vary state by state. And [00:04:00] so, just something to be paying attention to along with, I'm sure other trends we'll see in 2026.

Russell Berger: Yeah. Yeah. And I think the important reminder here is that, obviously, these types of laws take away options as to how employers can structure things, but they don't take away all the options.

So there's still ways to navigate through it. And still one, invest in your people, do right by your employees while two, also protecting yourself. Because, it's really about, in my mind it's really about getting that balance right. It's not about trapping people at work, it's about, investing and having the right bargain in place for that investment.

So, depending on the state specific laws, there are probably going to be ways to navigate through that and work towards that balance.

Sarah Sawyer: Yeah. Great points Well, we'll you next time, Russell. Thanks.

Russell Berger: Thanks Sarah.

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