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CFPB Spotlights Harms of Employer-Driven Debt

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On July 20, 2023, the CFPB published a report concerning the risks posed to consumers by employer-driven debt. Employer-driven debt is any form of financing arrangement where an employer extends credit or a lease to an employee to cover the cost of training, equipment, supplies, or other employment-related expenses, regardless of the employer's characterization or branding of the arrangement. These types of arrangements are especially prevalent in the nursing, financial services, aviation, and trucking industries. The CFPB's criticism primarily focused on one specific type of arrangement: the use of training repayment agreement provisions, which the CFPB refers to as "TRAPs."

While the report states that training repayment agreements are common tools used for higher-skilled, higher-wage positions, the potential risks cited in the report are significantly higher when used in lower- and moderate-wage industries (e.g., in the healthcare, transportation, and retail industries). While all companies offering any form of arrangement or benefit related to employees' expenses for equipment, training, or education, should consider the report, employer-driven debt arrangements may also impact institutions of higher education to the extent the institutions recommend them to students or even leverage them as potential recruiting tools for students obtaining certain degrees.

The CFPB's report comes on the heels of a year-long investigation into the practice. During the investigation, the CFPB solicited data and employee experiences and accepted public comments on the topic. The report represents the culmination of the investigation and outlines the conclusions the CFPB derived from that investigation related to the potential negative consequences of employer-driven debt on employees. Specifically, the report identifies several risks to consumers associated with employer-driven debt. The potential consumer harms identified in the report are discussed below.

CFPB-identified risks to consumers

1. *Employees may not be able to fully understand the terms and risks of the arrangement.*

Workers may not be given a copy of the agreement, or the terms of the agreement may be buried among several other employment documents, so that some workers are unsure of the amount owed, the required employment period, or other conditions of the arrangement.

Workers may feel rushed to sign numerous documents – including the debt arrangement – during the onboarding process, giving them minimal time to read and consider the terms.

Workers with limited English proficiency may be especially vulnerable.

Employers may also unilaterally change the terms of the arrangement or require workers to agree to training repayment arrangements after hire.

2. *Unequal bargaining power may have significant negative impact on workers.*

Workers may feel pressured to agree to, or powerless to negotiate or decline the terms of, the arrangements, particularly when a worker needs the job more than the employer needs that specific applicant. The CFPB expressed concern that employers may target vulnerable workers because they may be more likely to accept the debt out of necessity for work.

In some industries, it may be difficult for workers to find employment where the employer does not require some form of employer-driven debt.

Workers may feel "trapped" in the job until the debt is repaid because they cannot afford to repay the amount owed to the employer if they leave, enabling the employer to ignore complaints about low wages, increased hours, or working conditions.

3. *Workers may be misled about the cost of the debt and benefit of incurring the debt.*

Workers may be induced into employer-driven debt because employers may mislead workers about the nature, working conditions, or potential earnings for the prospective jobs for which they are incurring debt.

Employers may mislead workers about the value of the training, materials, or other services the workers will receive as part of the employer-driven debt arrangement. For example, an employer may charge workers $10,000 for training that was minimal and not materially more than standard onboarding training, such that the value was significantly less than the debt the workers were required to incur.

4. *Workers' household financial well-being may be harmed both during the employment period and after leaving the job.*

Workers subject to these arrangements may be paid less than they could receive at other companies. Employers entrenched in these arrangements may not compete on wages since the arrangements limit worker mobility for the duration of the agreement.

Employers may withhold earnings from workers' paychecks each pay period to cover the cost of the employee's training or materials, sometimes resulting in workers' inability to pay other household expenses.

Workers may incur additional debt to repay the amount owed to the employer after they leave the job.

Former employees may be pressured into making payments via demand letters or third-party collection companies, even when the debt may not be enforceable.

Agreements may contain provisions such as mandatory arbitration or waiver of class arbitration for employment disputes.

Employers may not have adequate records of the debts, which makes it difficult for workers to dispute the amount owed to the employer.

Employers may report a former employee's debt to a credit reporting agency, causing it to be included in a credit report. This can lead to questions about the debt during job interviews, and it can make it more difficult for the employee to access credit in the future.

How this development may affect employers

Employer-driven debt is a growing practice in several different industries. It is often seen as a critical recruiting tool for prospective employees who need, but may not otherwise be able to afford, extensive skill training. While this practice can be a mutually beneficial agreement where the employee receives valuable training on an in-demand and transferable skill, the CFPB believes that it can also be used to trap employees in jobs with lower wages and inadequate working conditions. As such, whether these arrangements survive likely increasing regulatory scrutiny will turn on the facts and circumstances of each arrangement.

Federal agencies across the government are pursuing regulation and enforcement to ensure workers are protected at work. For instance, the Federal Trade Commission has recently proposed a rule to restrict noncompete agreements. This inquiry further exemplifies federal agency efforts to exercise authority to curtail employment practices that are perceived to harm workers.

Even though federal agencies may view certain forms of these arrangements negatively, proper use and execution of these arrangements is permissible. To ensure protection against adverse government intervention, employers should consider a number of common sense practices to ensure that the employer-driven debt creates a positive outcome for both employer and employee.

How this development may affect institutions of higher education

Often employers will subsidize student tuition, offer student loans, or repay third-party or federal student loans as part of an “education-for-work” agreement. This practice is common in healthcare education programs. For example, a hospital may provide a loan to a student and agree to forgive the loan in exchange for a commitment to work at the hospital after graduation. Institutions of higher education should be aware of the contours of the CFPB’s criticism when engaging with employers and students in relation to “education-for-work” programs. Additionally, institutions should carefully consider what, if any, roles they play in listing, promoting, or administering these programs or recruiting students for them. Depending on those roles, institutional involvement may implicate a number of Federal Student Aid and other regulatory obligations.

Contact us

If you have questions about employer-driven debt, structuring compliant arrangements, or other matters related to extending credit to employees, please reach out to Leslie Sowers, Annie Cartwright, Daniel Wilkinson, Abby Felter, or your Husch Blackwell attorney.

Webinar: September 27

If you are interested in learning more about this topic, please join us this Wednesday, September 27, for a Higher Education & Consumer Finance webinar, “What Institutions and Financers of Higher Education Need to Know.” Our professionals will provide an overview of the consumer finance regulations applicable to institutions of higher education and other entities that offer or service student loans. Register here.