How NY Stay-Or-Pay Law Shifts Leverage Dynamics

By **James Valentino** (March 10, 2026)

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The recent passage of New York's Trapped at Work Act reflects the state Legislature's increasing scrutiny of so-called stay-or-pay arrangements.[1] The statute targets what it defines as "employment promissory notes," which are broadly encompassing instruments or contract provisions that obligate an employee to pay the employer a sum of money upon the termination of the employment relationship.

The legislative thrust is unmistakable: Employers may not require these repayment obligations as a condition of employment, and doing so is unconscionable, contrary to public policy, and null and void. This article explores the implications of the act lacking a private right of action.

The act was initially signed into law by Gov. Kathy Hochul on Dec. 19, and was subsequently amended on Feb. 13. The amendment postponed its effective date, and clarified and narrowed aspects of its scope while preserving its core prohibition.

The amendment refines the statute's coverage of employees and delineates specific exceptions. These carveouts include, among others, certain voluntary tuition reimbursement arrangements that are tied to so-called transferable credentials, and limited categories of bonus or relocation repayment agreements.[2]

The original version of the law was to take effect immediately upon passage, but the amendment moved the effective date to one year after it became law. This gives employers a defined compliance window to review and, if necessary, revise existing agreements and onboarding practices.

Together, these revisions suggest an effort to balance the act's worker-protective purpose with commercial realities, particularly in industries where training investments and incentive compensation structures are common.

What distinguishes the Trapped at Work Act from many other New York labor statutes is not only what it prohibits, but how it is enforced. The act does not create a general private right of action for employees to sue employers directly for damages based on the use of a prohibited promissory note.

Instead, enforcement authority is vested in the New York State Department of Labor. Employees and prospective employees who believe that the act has been violated may file a complaint with the commissioner of labor, who investigates and determines whether a violation occurred. If so, the commissioner may assess civil penalties.[3]

Designing Enforcement to be Administrative

The act's civil penalty structure — set within a defined range and calculated per affected employee or prospective employee — can create meaningful exposure, particularly for employers that use standardized agreements across the workforce.

The statute directs the commissioner to consider contextual factors when assessing

penalties, including the size of the employer's business, the gravity of the violation, the employer's good faith belief in compliance and whether it has a prior history of violations.[4]

That framework signals a regulatory enforcement model, rather than a purely punitive one. Employers that proactively revise agreements during the one-year compliance period and document good faith efforts may be better positioned if enforcement questions arise.

The Leverage Implications of No Private Right of Action

For attorneys who are accustomed to litigating under the New York Labor Law — where fee-shifting provisions and statutory damages can drive early resolution — the enforcement structure here represents a meaningful departure. In many employment contexts, the availability of a private right of action, coupled with attorney fees, dramatically reshapes leverage dynamics.

For example, under city, state and federal law, wage and hour claims and discrimination claims all carry fee-shifting provisions. That structure empowers employees and their counsel to pursue claims even where damages are modest, and it incentivizes early resolution to avoid the cost and risk of escalating fee exposure.

The Trapped at Work Act does not provide that lever. An employee cannot initiate a civil action seeking damages, statutory penalties or attorney fees simply because an employer required or included a prohibited promissory note. Instead, the employee must file a complaint with the state's Department of Labor and await administrative action. The department determines whether to investigate, how to prioritize the complaint and whether to impose penalties.

From a negotiation standpoint, this materially alters the calculus. The threat of a public lawsuit — particularly one that carries fee-shifting exposure — can drive prelitigation settlement discussions. Employers weigh not only the merits of the claim, but also the cost of litigation, the unpredictability of jury exposure and the risk of paying the employee's attorney fees.

Here, absent an independent cause of action, that immediate litigation threat is removed. An employer that is facing a complaint may evaluate risk primarily in terms of potential administrative penalties and compliance directives, rather than open-ended litigation costs.

For employee-side practitioners, the lack of a private right of action constrains strategic options. Counsel cannot file suit to enjoin enforcement of a promissory note or seek damages solely under this statute. Nor can they rely on statutory fee shifting to justify litigation in smaller matters. Thus, the leverage dynamic shifts from courtroom exposure to regulatory scrutiny.

That said, the statute is not entirely devoid of litigation consequences. If an employer attempts to enforce a promissory note that is void under the act — by filing a civil action to collect repayment — the employee who successfully defends that action may recover attorney fees.[5]

This targeted fee-shifting mechanism serves as a deterrent against affirmative enforcement of prohibited agreements. It does not, however, create an affirmative damages claim independent of employer-initiated litigation.

Administrative Enforcement: Strengths and Structural Limits

Channeling enforcement through the state's Department of Labor has both advantages and limitations.

On the one hand, centralized enforcement can promote interpretive consistency and avoid early, fragmented judicial rulings. The commissioner's rulemaking authority may provide clarity regarding the scope of exceptions and compliance standards. Agency enforcement can also address systemic practices affecting multiple employees without requiring each individual to initiate litigation.

At the same time, reliance on administrative enforcement may temper the statute's deterrent force in individual disputes. Agency investigations require time and resources, and enforcement priorities necessarily compete with other statutory mandates. Without the immediate prospect of civil litigation and fee-shifting exposure, employers may perceive the risk profile differently — particularly where civil penalties are defined and capped.

For attorneys advising employers, the absence of a private right of action should not be mistaken for low exposure. Per-employee penalties can aggregate quickly. Further, the statute renders prohibited agreements void as a matter of public policy, meaning that attempted enforcement carries reputational and fee-shifting risks.

For attorneys representing employees, strategic framing becomes critical. Complaints to the state's Department of Labor should be comprehensive and well documented, emphasizing systemic practices where applicable. Counsel should also assess whether related claims — such as retaliation, unlawful wage deduction or discrimination claims — provide independent litigation leverage that the Trapped at Work Act does not.

Conclusion

As amended, the Trapped at Work Act represents a targeted intervention into a specific category of employment agreements, coupled with a deliberate enforcement design. By postponing the effective date for one year, the Legislature afforded employers time to recalibrate. In withholding a private right of action, it centralized enforcement in the state's Department of Labor.

For practitioners, the statute underscores a critical procedural truth: Enforcement architecture matters. A law without a private right of action reshapes negotiation dynamics, redistributes leverage and shifts the center of gravity from the courthouse to the agency. How aggressively the state's Department of Labor exercises its authority will ultimately determine whether the act functions as a robust deterrent or as a compliance obligation whose practical force depends on regulatory vigilance.

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[1] New York Labor Law §§ 1050-1055.

[2] Id., at §1052.

[3] Id., at §1053.

[4] Id.

[5] Id.