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THE REGISTER CITIZEN

Today's Business: Caution required in offering incentives to attract workers

Reese Mitchell

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Reese Mitchell Contributed photo

With the nation's current labor shortage, companies now are looking into various incentives to attract workers. Employers are trying to sweeten the deal for potential employees with seemingly everything on the table, from increasingly high sign-on bonuses to attractive maternal and paternal leave options.

However, Connecticut employers should take notice of a potential fly in the ointment.

Some hiring incentives require an employee to pay back the employer if the relationship were to go sour within a specified period of time.

Connecticut law (General Statute § 31-51r) prohibits the execution of so-called promissory notes in the employment context by employers with 26 or more employees. What is a promissory note?

Connecticut defined the term. Simply put, it is an agreement requiring an employee to repay the employer a sum of money if the employee leaves before the passage of a stated period of time — including reimbursement for training.

So, if an employee signed such an agreement at the start of a new job, accepting a variety of monetary incentives, that person could be liable to paying back a the cost of those incentives if he or she quits within the time frame designated in the agreement.

Meanwhile, the state's aversion to such agreements is so intense that the statute decrees such agreements "as a condition of employment is against public policy and such note shall be voided."

But, with just about everything in life, it depends.

The state statute does not void four specific types of agreements between an employer and employees.

Quit your job too soon and the employer could demand repayment of:

1. Money the employer advanced, including draws on commissions for salespersons.
2. An employee paying for property the employer has sold or leased to the employee.
3. Funds for educational sabbatical leave.
4. Funds paid the employees' collective bargaining representative.

What, then is the ultimate consequence of Section 31-51r?

It is simple. Connecticut bars employers from using some of the more common incentives to attract employees. One of the more popular offers is to pay a potential hire's moving costs with the caveat that the employee has to work for a specific period of time or the money has to be reimbursed. This particular incentive, while commonplace throughout the country, could violate Connecticut law. The sticking point in this scenario is the requirement to reimburse the employer for the moving costs if, for some reason, the employee cannot work through the agreement's window and, as a practical issue, would not be able to

come work for the employer without their moving costs paid for. This requirement to pay back for failing to perform during a finite period might be a fatal blow to this kind of deal under Connecticut law.

Some may indeed make the argument that such offers are not conditions of employment because an employee can decide to take a job without these incentives. However, depending on the circumstances, such offers may be for practical reasons. For instance, the prohibitive costs of moving could inhibit or even prohibit a potential employee from accepting the offered job unless the employer reimbursed the moving costs.

The bottom line: employers need to be wary of their promises to potential employees when recruiting workers to come to Connecticut.

Attorney Reese Mitchell is an associate at Stratford-based Mitchell & Sheahan, P.C. He is involved in handling all types of employment matters, including through all stages of the litigation process. He can be reached at ReeseMitchell@mitchellandsheahan.com or at 203-873-0240.