

We're Trying to Help! Employer Guidelines to Avoid Legal Pitfalls with Tuition Assistance Benefit Programs

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With historically low unemployment rates, attracting and retaining top talent can be a challenge for employers. To distinguish themselves from the pack, many companies are considering tuition assistance programs to both develop their workforce and as a benefit to attract and retain talented employees. Although the offer of student loan assistance might give you a leg up on the competition in a tight labor market, there are several things to consider before jumping in.

Why Tuition Assistance?

Currently, more than 45 million Americans owe more than \$1.7 trillion in student loan debt — the second highest category of debt behind mortgages. Large corporations such as [Starbucks](#), [Walmart](#), and [Amazon](#) have all made tuition assistance a key part of their employee benefits' packages. Younger workers are particularly attracted to educational benefits, often ranking them as one of their [primary job considerations](#). Particularly in highly competitive industries, wise companies are leveraging the popularity of tuition assistance benefits to attract and retain the best talent.

The Primary Tuition Assistance Programs

The primary vehicles for tuition assistance programs are tuition funding programs, tuition reimbursement assistance, direct tuition assistance, and student loan repayment. Each of these programs have their own particular characteristics and benefits.

- *Tuition Funding Programs* – In tuition funding programs, employers provide scholarships, grants, or loans to students who enroll in relevant workforce training programs or schools as a way to develop new talent. These programs are particularly useful in industries with steeper barriers to entry, such as coding and nursing. In the technology sector, many “coding bootcamps” have adopted this model, often offering free or reduced tuition in exchange for a student’s agreement to work for a particular company. Many employers protect their investment in these programs through Income-Share Agreements (ISA) or

restitution/repayment agreements with the students.

- *Direct Tuition Assistance* – With direct tuition assistance, employers provide educational funds for qualifying employees upfront or directly to the educational institution. Because these programs do not require an employee to make any upfront payments, they are often more attractive than a reimbursement-based program and allow a broader group of employees to take advantage of the program.
- *Tuition Reimbursement Assistance* – With tuition reimbursement assistance benefit programs, eligible employees are required to pre-pay tuition expenses and then submit a request for reimbursement. Tuition reimbursement assistance programs allow an employer more flexibility to create robust eligibility requirements for the program, such as requiring that an employee complete their courses with an adequate GPA to be eligible for reimbursement.
- *Student Loan Repayment* – Student loan repayment programs assist employees with repaying already-incurred student debt. Some employers will offer a defined contribution model while others may offer to match the amount employees pay toward their student loans. Unlike the other tuition assistance models, student loan repayment programs are designed to minimize the debt employees already have rather than help employees add to their educational qualifications.

Legal Considerations for Tuition Assistance Programs

1. *Put it in writing.* Whether through a direct agreement with the employee or through a formal, written policy, you should formalize the terms and conditions of any tuition assistance program in writing. Oral or unwritten policies may be difficult or impossible to enforce and may subject the employer to claims of discrimination in the administration or provision of the benefit. Look carefully at the eligibility requirements, the class of employees eligible for the benefits, the amounts of benefits available, and the types of educational programs and expenses that qualify under the program.
2. *Look for tax caps.* As part of 2020's COVID-19 relief package, the Consolidated Appropriations Act, Congress expanded Section 127 of the IRS code to allow employers to offer up to \$5,250 in student loan repayment benefits tax-free through 2025. The relevant statutory language appears in the Internal Revenue Code at [26 USC § 127\[YA1\]](#). The current regulations can be found at [26 CFR 1.127-1](#), [26 CFR 1.127-2](#) and [26 CFR 1.162-5](#). Although broad categories of educational expenses are eligible for this tax treatment — including tuition, fees and similar payments, books, supplies, and equipment — the code excludes payments for tools or supplies that the employee retains, meals, lodging, and transportation. Educational courses involving sports, games, or hobbies also are excluded. Be mindful that tuition assistance benefits that exceed \$5,250 annually are considered wages, subject to federal income and payroll tax withholding. If you provide direct payments to your employee, make sure to put in place a method to ensure or certify that the employee is using the money only for eligible expenses.
3. *Don't forget the Truth in Lending Act (TILA) or the Fair Debt Collection Practices Act (FDCPA).* If a benefit plan anticipates an employee having to repay the benefit (e.g., the employee leaves the company before a certain amount of time has passed), you may need special considerations to account for the Truth in Lending Act and debt collection laws such

as the Fair Debt Collection Practices Act.

First, the benefit could potentially be considered “credit,” and the employer might potentially be considered a “creditor” for purposes of TILA. The act requires certain disclosures in connection with an extension of credit, which you may need to provide if you structure your benefit program in this way. Moreover, TILA contains special additional disclosures and limitations for education loans that may apply.

Additionally, in the unhappy circumstance that you are forced to take actions to collect repayment from the employee, you may need to comply with the federal FDCPA or other state-law debt collections statutes, particularly if you use a third-party debt collector.

- *Income-Share Agreements (ISA) are considered “credit” under TILA.* Some tuition funding programs are ISAs and require the employee to repay the advanced tuition through payments of a percentage of income. Others may require the student to sign an ISA that is only triggered if the student does not take employment with the employer or leaves the employer before a certain amount of time has passed. The Consumer Financial Protection Bureau recently concluded that ISAs [meet the Truth In Lending Act’s definition of “credit.”](#) Accordingly, ISAs are subject to TILA’s disclosure requirements and other limitations related to education loans. Of particular note is TILA’s prohibition on pre-payment penalties for education loans, which may conflict with the structure of an ISA.
- *Check state law before requiring a non-compete agreement or repayment requirement.* Some employers couple tuition assistance benefits with a non-compete agreement or a requirement that the employee pay back the benefit if he or she does not remain employed for a certain period of time. While this structure helps to ensure that the employer gets the most out of the tuition assistance benefit, such agreements may run afoul of state employment laws that prohibit certain covenants limiting professional mobility. Some states’ laws even apply to damages provisions that impose a severe economic penalty on a departing employee. State law should be consulted to ensure that such non-compete or repayment requirements would be enforceable.

Conclusion

Tuition assistance programs can be a key component of a company’s talent recruitment and retention efforts. Each employer should evaluate its particular situation as to which programs will be best and be aware of the legal strings that accompany each.

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National Law Review, Volume XII, Number 208

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