

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

Interns Are Protected Employees, Too (In New York Anyway)

By Bennett Pine

On July 22, 2014, Gov. Andrew Cuomo signed legislation amending the New York State Human Rights Law to protect unpaid interns from harassment, discrimination and other forms of unlawful employment practices in the workplace.

Interns — paid or unpaid — are now protected against discrimination in selection, retention and terms and conditions of employment on the basis of age, race, sex, sexual orientation, creed, color, national origin, disability, genetic predisposition, marital status, domestic violence victim status and pregnancy.

Retaliation

The law also protects interns who complain about discrimination from unlawful retaliation.

New York City

In March 2014, New York City passed a bill granting similar protections to interns working in the city. (Washington, D.C., and Oregon also have expanded their anti-discrimination and harassment protections to interns.)

Purpose

Both the New York City and state laws “are intended to override” an October 2013 ruling by a federal District Court judge in New York (and other New York case laws) that expressly rejected an intern’s claims of sexual harassment because she was found to be an unpaid intern, and not an “employee,” within the meaning and protections of the New York State Human Rights Law. The legislature stated that “[i]nterns, to an even greater extent than employees, are easy victims of sexual harassment as the relationship between employer and intern is the classic example of the power imbalance that is at the heart of sexual harassment.”

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Harassment Covered

It should be noted that the new law expressly prohibits both unwelcome sexual advances and other forms of harassment based on a protected characteristic toward interns.

Intern Definition

As used in the human rights law, "intern" means a person who performs work for an employer for the purpose of training under the following circumstances:

1. The employer is not committed to hire the person performing the work at the conclusion of the training period.
2. The employer and the person performing the work agree that the person performing the work is not entitled to wages for the work performed.
3. The work performed:
 - a. provides or supplements training that may enhance the employability of the intern;
 - b. provides experience for the benefit of the person performing the work;
 - c. does not displace regular employees; and
 - d. is under the close supervision of existing staff.

Not Addressed

Employers should be aware that the new law is limited to matters of discrimination, harassment and related employment practices. It expressly provides that "[n]othing in this section shall create an employment relationship between an employer and an intern for purposes of [the wage-hour provision of New York or federal law.]" As has been widely reported (see Employment Law Insider Alerts September 2012, June 2013 and October 2013), much litigation currently is pending regarding the issues of the employment status and compensation entitlement of unpaid interns.

Recommendations

Whether or not interns are entitled to compensation, employers would be wise to treat them with dignity and respect, and to ensure that the current staff is aware that interns in New York are covered by the employer's non-discrimination and sexual harassment policies and are entitled to bring claims under the human rights law.▲

