ANDERSON KILL
EMPLOYMENT LAW INSIDER
ALERT
October 2013

RECENT NEWS

Accommodating Pregnant Employees in NYC; Internship Controversy Continues — Law Firms Given Approval to Use Unpaid Interns

By Bennett Pine

NYC Council Extends Additional Workplace Protections to Pregnant Employees

On September 23, 2013, the New York City Council, by a unanimous, veto-proof 47-0 vote, approved the Pregnant Workers Fairness Act. This new law prohibits New York City employers from refusing to provide reasonable accommodations to women because of pregnancy, childbirth and related medical conditions, and enables individuals who believe they have been discriminated against on account of pregnancy to bring claims.

The Pregnant Workers Fairness Act accomplishes two main things.

First, the law, which applies to all businesses with four or more employees, including independent contractors, would require providing "reasonable accommodations" to pregnant employees, unless an "undue hardship" would result. Such accommodations, designed to maintain a healthy pregnancy, could include provision of such things as extra bathroom or water breaks, permission to carry a water bottle, or periodic use of a seat or stool.

Second, the law gives pregnant individuals who believe they have been denied reasonable accommodations or otherwise discriminated against the right to file a complaint with the New York City Commission on Human Rights, or bring a civil action against their employer.

The new law's sponsors said it was designed to close a "glaring gap in the human rights law" because pregnancy is considered a temporary condition, and not a protected "disability," thus not protected under the Americans with Disabilities Act.

Similar legislation has been introduced, but has not been passed, in both the New York State Legislature and Congress. Similar laws have been passed in other states, including California, Connecticut, Hawaii, Louisiana, Texas and Illinois.

The New York City Commission on Human Rights will be creating a written notice of rights, which employers must distribute to employees.

The Pregnant Workers Fairness Act will take effect 120 days after it becomes a law.

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000 Fax: (212) 278-1733

ANDERSON KILL
864 East Santa Clara Street
Ventura, CA 93001
(805) 288-1300 Fax: (805) 288-1301

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950 Fax: (203) 388-0750

ANDERSON KILL
1717 Pennsylvania Avenue, Suite 200
Washington, DC 20006
(202) 416-6500 Fax: (202) 416-6555

ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858 Fax: (973) 621-6361

ANDERSON KILL
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(267) 216-2700 Fax: (215) 568-4573

www.andersonkill.com

who's who

Bennett Pine is a shareholder in Anderson Kill's New York and Newark offices and is chair of the firm's employment & labor group. Mr. Pine has broad-based labor and employment law experience and regularly plays a hands-on role offering preventative maintenance advice and counseling to employers in the full range of legal issues affecting the workplace.
bpine@andersonkill.com
(212) 278-1288
(973) 642-5006

Internship Controversy Continues: Law Firms Given Approval to Use Unpaid Interns — Well, Kind Of…

As we reported there has recently been a great deal of litigation — including class actions — and criticism surrounding the practice of large, for-profit businesses utilizing unpaid interns as a form of "free labor." Supporters of the practice counter that the internships provide an invaluable source of real world experience for students anxious to obtain a pathway into possible careers.

In an interesting development, striking a significant middle ground, the U.S. Labor Department, in a September 12, 2013, letter to the American Bar Association, has interpreted the federal Fair Labor Standards Act to expressly permit the use of unpaid law-student interns on pro bono non-fee-generating matters. According to Solicitor of Labor M. Patricia Smith, "Under certain circumstances, law students who perform unpaid internships with for-profit law firms for the students' own educational benefit may not be considered employees entitled to wages under the FLSA."

However, in order for the unpaid law firm internship to be permissible, six criteria need to be satisfied:

1. Training must be similar to what students would get in school.
2. The internship must be for the benefit of the intern.
3. The intern must be closely supervised and must not displace existing staff.
4. The firm cannot directly benefit from the intern's work.
5. The intern is not necessarily entitled to a job after the internship ends.
6. The intern and firm must both understand that the intern is not entitled to wages.

M. Patricia Smith commented further that:

> Accordingly, where a law student works only on pro bono matters that do not involve potential fee-generating activities, and does not participate in a law firm's billable work or free up staff resources for billable work that would otherwise be utilized for pro bono work, the firm will not derive an immediate advantage from the student's activities, although it may derive intangible, long-term benefits such as reputational benefits associated with pro bono work.

It also should be noted that the Labor Department's letter expressly stated that the permissible pro bono, unpaid internships for law *students* not extend to recent law school *graduates* who have not yet been admitted to the bar.