

Unpaid Interns in New York State Continue to Gain Protections Under Anti-Discrimination Laws

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On July 22, 2014, Governor Andrew Cuomo signed [an amendment](#) to the New York State Human Rights Law ("NYSHRL"), adding a section relating to discriminatory practices against unpaid interns. The amendment, which gives unpaid interns in New York State the same protections against discrimination as employees, is effective immediately. The NYSHRL protects individuals from discrimination in employment—including hiring, conditions and privileges of employment, and termination—on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, and domestic violence victim status.

Previously, unpaid interns did not have any rights under the NYSHRL. In its justification memorandum explaining the amendment, the New York State Assembly pointed to several cases under the NYSHRL where volunteers and unpaid interns were not protected against discrimination. Earlier this year, New York City [enacted a similar law](#), following Oregon and Washington, D.C., and relying upon case law where unpaid interns were unable to bring a suit under the City and State Human Rights Laws.

Coverage

The NYSHRL applies to New York employers, including employment agencies, with four or more employees (including independent contractors who are "natural persons" and not themselves employers). Under the amended NYSHRL, the term "intern" means a person who performs work for an employer for the purpose of training under the following circumstances:

- the employer is not committed to hire the person performing the work at the conclusion of the training period;
- the employer and the person performing the work agree that the person performing the work is not entitled to wages for the work performed; and

- the work performed:
 - provides or supplements training that may enhance the employability of the intern;
 - provides experience for the benefit of the person performing the work;
 - does not displace regular employees; and
 - is performed under the close supervision of existing staff.

Notably, the law specifically addresses the concern of whether an individual who qualifies as an unpaid intern under this test may be deemed an “employee” for a similar purpose under federal, city, or state laws. To address this concern, the amendment specifically states that “[n]othing in this section shall create an employment relationship between an employer and an intern for the purposes of articles six, seven, eighteen or nineteen of the labor law.”¹

What Employers Should Do Now

While the amended NYSHRL clearly recognizes the fact that some employers utilize unpaid interns, before doing so, an employer should [review applicable law on unpaid interns and understand the risks](#) associated with utilizing unpaid interns. Specifically, the employer should ensure that any unpaid intern falls within the “trainee” exception to the definition of “employee” under the federal Fair Labor Standards Act and the New York State Labor Law.

Employers that utilize unpaid interns should do the following:

- Be aware that anti-harassment, anti-discrimination, and anti-retaliation protections now apply to unpaid interns.
- Amend existing policies prohibiting harassment, discrimination, and retaliation to make clear that prohibitions against same apply to unpaid interns.
- Provide interns, even if unpaid, with workplace policies addressing workplace harassment, discrimination, and retaliation, including complaint procedures.
- Train managers and employees that, like employees, unpaid interns should not be subjected to harassment, discrimination, or retaliation.

¹ Articles six, seven, eighteen, and nineteen of the New York State Labor Law address payment of wages, the Labor Law’s general provisions, unemployment insurance, and the minimum wage, respectively.

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