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LABOR & EMPLOYMENT LAW ALERT

Governor Cuomo Signs Bill Extending Discrimination Protections to Unpaid Interns

On July 22, 2014, New York Governor Andrew Cuomo signed legislation that provides unpaid interns with the same protections as paid employees under the New York State Human Rights Law. Under the new law, which is effective immediately, interns may not be discriminated against with respect to hiring, discharge, or terms or conditions of employment based on their age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status. The new law also prohibits sexual harassment, and prohibits employers from retaliating against interns for opposing prohibited practices or for filing a complaint, testifying or assisting in a proceeding brought under the New York State Human Rights Law.

An “intern” is defined under the new law – N.Y. Executive Law § 296-c – as “a person who performs work for an employer for the purpose of training under the following circumstances: (a) the employer is not committed to hire the person performing the work at the conclusion of the training period; (b) 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 (c) the work performed: (1) provides or supplements training that may enhance the employability of the intern; (2) provides experience for the benefit of the person performing the work; (3) does not displace regular employees; and (4) is performed under the close supervision of existing staff.”

The new law stems from a 2013 decision by a federal district court in New York that denied a sexual harassment claim by an unpaid intern, holding that the intern was not an “employee” within the meaning of the law because she received no remuneration for her services. *Wang v. Phoenix Satellite Television US, Inc.*, 976 F. Supp. 2d 527 (S.D.N.Y. 2013). In other words, until now, compensation was considered the touchstone of an employer-employee relationship under New York law. The bill, which was modeled after a similar measure in Oregon that extended discrimination and harassment protections to interns, also comes just a few months after the Mayor of New York City signed a law granting similar protections there.

According to the bill’s sponsors, “[w]hile it made sense 30 years ago for courts to use a dictionary definition of employer to conclude that unpaid volunteers (or interns) were not covered by the NYS Human Rights Law, in today’s economy the failure to protect interns – whether paid or unpaid – against sexual harassment and other forms of discrimination no longer makes sense, is bad social policy, and is inconsistent with the overarching purpose of the Human Rights Law to ‘assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life . . . [and] . . . to eliminate and prevent discrimination. . . .’” The sponsors further noted, as justification for the bill, that “[y]oung people seeking employment in an economy that still has not recovered from the worst recession since the Great Depression are under extreme pressure to build up resumes and work references. Increasingly, they turn to unpaid internships to do so. Interns, 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.”

Employers who have hired or anticipate hiring unpaid interns in the near future should modify their anti-discrimination and anti-harassment policies to incorporate language recognizing the protection of unpaid interns under the Human Rights Law. And, on that topic, employers should also make sure that their unpaid interns are not actually employees, who would be entitled to minimum wage and overtime pay protections under the Fair Labor Standards Act and New York Labor Law.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

Melinda Burdick Bowe	315.565.4507	mbowe@hancocklaw.com
John F. Corcoran	315.565.4515	jcorcoran@hancocklaw.com
Lindsey H. Hazelton	315.565.4527	lhazelton@hancocklaw.com
John T. McCann	315.565.4540	jmccann@hancocklaw.com
Robert J. Thorpe	315.565.4555	rthorpe@hancocklaw.com
Robert C. Whitaker, Jr.	315.565.4557	rwhitaker@hancocklaw.com

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