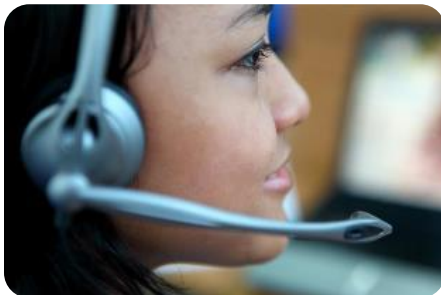


## New York State Expands Workplace Protections of Interns

On July 22, New York Governor Andrew Cuomo signed into law amendments to the New York Executive Law, making the state the fourth jurisdiction to prohibit employment discrimination against unpaid interns. The amendments, which took effect immediately, follow on the heels of similar changes to NYC's Human Rights Law. Businesses that offer internships in New York state or city should ensure that their policies reflect the new statutory protections.

### Background



Article 15 of the New York State Executive Law, also referred to as the New York State Human Rights Law ([NYSHRL](#)), generally applies to employers with four or more employees. Under the NYSHRL, it is unlawful for an employer to refuse to hire, to fire, or to discriminate against an individual in compensation or in terms, conditions, or privileges of employment on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status. The law also provides protection against harassment.

Unpaid interns have generally not been extended the same protections against employment discrimination and harassment that paid employees enjoy, as courts have concluded that they are not employees protected by Title VII of the Civil Rights Act of 1964 or the NYSHRL. Until last month, only one state — Oregon — along with Washington DC and New York City provided protections to unpaid interns under their anti-discrimination laws.

**Comment.** As recently as last October, a New York federal court held that unpaid interns were not covered by the New York state and city human rights laws. Earlier this year, NYC amended its law to extend workplace protections to interns. (See our [April 30, 2014](#) *For Your Information*.)

### Strengthened Protections against Employment Discrimination

On July 22, New York Governor Andrew Cuomo signed into law a [bill](#) amending the NYSHRL to prohibit employment discrimination against unpaid interns and provide them with the same protections against

discrimination available to paid employees. The amendments, which are largely modeled on Oregon's intern protections, took effect immediately.

The bill added a new section 296-c to the NYSHRL, prohibiting discriminatory employment practices relating to all interns, including those not part of a formal academic program. The new law defines "intern" as an individual who performs work for an employer for the purpose of training where:

- The employer is not committed to hiring the individual at the end of the training period.
- The individual agrees that he/she is not entitled to wages for the work performed.
- The work performed provides or supplements the intern's training, provides experience for the intern's benefit, does not displace regular employees, and is performed under close staff supervision.

The amended law extends to interns and prospective interns the same statutory protections that paid employees enjoy against employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status. In addition to barring employers from discriminating with respect to hiring, firing, or terms or conditions of employment because of an intern's protected characteristics, the amended law prohibits discrimination in the application process for internships (including advertising, application forms, or application inquiries) and retaliation for opposing discriminatory practices.

**Comment.** While the amended law makes clear that it does not create an employment relationship between employers and their unpaid interns for purposes of New York wage payment, unemployment, and minimum wage laws, the US Court of Appeals for the Second Circuit is poised to decide whether interns qualify as "employees" under federal minimum wage and overtime laws.

Importantly, the law also provides broad protections to interns against harassment, prohibiting employers from engaging in unwelcome verbal or physical conduct of a sexual nature directed toward them or subjecting them to unwelcome harassment or a hostile work environment because of their age, sex, race, creed, color, sexual orientation or other protected characteristic. Additionally, the law extends the same protections against compulsory leave to pregnant interns that paid employees enjoy, expressly prohibiting employers from requiring a pregnant intern to take a leave of absence unless the pregnancy prevents her from reasonably performing job activities.

## In Closing

The protection of unpaid interns in the workplace is an emerging issue that bears watching. Following NYC's lead, New York state has now extended protections against discriminatory employment practices to unpaid interns and applicants for internships. In light of these changes, employers that offer internships in the state will need to review their employment policies as well as their internal complaint procedures to ensure that unpaid interns enjoy the same protections against employment discrimination and workplace harassment as paid interns and employees.

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