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The New York City Human Rights Law amended to protect unpaid, non-employee interns from discrimination and harassment

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On March 26, 2014, the New York City Council (the “Council”) voted unanimously to pass legislation amending the New York City Human Rights Law (the “NYCHRL”) to provide that interns are protected from workplace discrimination and harassment under the NYCHRL. New York City Mayor Bill de Blasio is expected to sign the bill into law shortly, which will make New York City one of the few cities in the country to extend the same workplace protections against discrimination and harassment to interns—both paid and unpaid—as is provided to employees. The amendment will go into effect 60 days after it is signed by Mayor de Blasio.

The Council passed this amendment in response to a recent federal lawsuit in which the court dismissed an unpaid intern’s sexual harassment claims on the basis that the NYCHRL applied only to “employees”—a term that did not include unpaid interns or volunteers. In October 2013, the Honorable P. Kevin Castel, U.S.D.J., of the United States District Court for the Southern District of New York, dismissed plaintiff Lihuan Wang’s claims of sexual harassment, finding that the NYCHRL’s protection of employees “[did] not extend to unpaid interns.” *Wang v. Phoenix Satellite Television U.S., Inc.*, 2013 U.S. Dist. LEXIS 143627, at *26 (S.D.N.Y. Oct. 3, 2013). In reaching this holding, Judge Castel relied not only upon United States Court of Appeals for the Second Circuit case law and interpretations of analogous wording in Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law, but also the legislative history of the NYCHRL. *See id.* Finding that the Council had made a series of “fundamental amendments” to the NYCHRL over the years, which expanded the statute’s coverage, he noted that “[n]one of these amendments . . . altered the NYCHRL to add a provision extending coverage to unpaid interns or volunteers.” *Id.* at *24.

The Council’s recent amendment, however, will expand the coverage of the NYCHRL to explicitly apply to interns, including unpaid interns. The amendment defines the term “intern” as follows:

- an individual who performs work for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides

experience for the benefit of the individual performing the work; and (c) is performed under the close supervision of existing staff. The term shall include such individuals without regard to whether the employer pays them a salary or wage.

The amendment further provides that the provisions of the NYCHRL “relating to employees shall apply to interns.” Accordingly, interns are now protected against discrimination on the basis of their protected characteristics, such as their age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage or citizenship status or status as a victim of domestic violence, sex offense or stalking. In addition, the March 26, 2014, press release from the Council’s Office of Communications provides that the amendment “would require employers to make reasonable accommodations for interns in certain circumstances.”

All New York City employers that provide opportunities for paid or unpaid interns, including for-profit companies and nonprofit organizations, should take steps to ensure that interns present in their workplaces are afforded the same level of protections against discrimination and harassment that would normally apply to employed members of the workforce. This may require companies and organizations to revise non-discrimination and non-harassment policies, as well as internal complaint procedures, in order to specifically account for the NYCHRL’s recent expansion. Additionally, employers should make sure that interns receive copies of the non-discrimination and non-harassment policies and internal complaint procedures on a going forward basis.

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