



UPDATE: New York City Council Passes Legislation Protecting Unpaid Interns From Sexual Harassment

March 28, 2014

In December 2013, we discussed the Southern District's decision to dismiss an unpaid intern's claim for sexual harassment against her former employer. In this case, Lihuan Wang v. Phoenix Satellite TV US,^[1] Judge Kevin Castel held that protections against workplace sexual harassment under the New York City Human Rights Law extend only to employees, and not to unpaid interns. Because the female intern in this case was not paid for her work, she was not considered an employee, and thus, did not have standing to bring a claim of sexual harassment under the New York City Human Rights Law.

In the wake of the Southern District's decision, the New York City Council unanimously voted yesterday (March 27, 2014) to amend the New York City Human Rights Law to provide New York City interns with workplace protections. The legislation, Intro 173-A, specifically prohibits employers from discriminating against interns, whether paid or unpaid, on the basis of gender, race or any other protected class.

This legislation was co-sponsored by Council Member James Vacca, who created the bill after Judge Castel's ruling that an unpaid intern didn't have standing to sue for sexual harassment because she was not a paid employee. The judge's decision received an enormous amount of media scrutiny and exposed a major labor law loophole "so large you could drive a truck through it" said Council Member Vacca. "Interns are a vital part of the workforce, and they deserve to receive the same protections as all other employees. Every worker – paid and unpaid – should have the right to do their job in a harassment-free environment. Interpretation of the current law leaves a Swiss cheese-like hole that could jeopardize an intern's rights and recourse. I am proud to sponsor this legislation, which will give a voice to all interns who are subjected to discrimination," stated Council Member Vacca.

New York City is one of the first cities in the country to pass legislation specifically extending laws against sexual harassment to unpaid interns. "No one should ever have to tolerate a discriminatory work environment, regardless of title," said Council Speaker Melissa Mark-Viverito. "Interns are often young people getting their first experience in a professional setting, so it's especially important that they are exposed to a respectful and appropriate work environment where their rights are protected."

If signed by Mayor Bill de Blasio, the bill will take effect sixty days later. With the potential expansion of workplace protections looming, both public and private employers should pay close attention to whether Mayor de Blasio signs this bill into law. Specifically, employers must review and revise their policies to make sure that

they are complying with this new legislation and reducing the risk of sexual harassment and discrimination in the workplace.

If you or your institution has questions or concerns about this topic and you would like further information, please email James G. Ryan at jryan@cullenanddykman.com or call him at 516-357-3750. This article was written with Hayley Dryer, an associate at the firm.

[1] 2013 U.S. Dist. LEXIS 143627 (S.D.N.Y. 2013).