

## Can Unpaid Interns Sue For Sexual Harassment? New York Court Says No Under City Law

[Aaron Warshaw](#) and [P. Kramer Rice](#) | October 18, 2013

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On October 3, 2013, the U.S. District Court for the Southern District of New York dismissed an unpaid intern's hostile work environment, *quid pro quo* sexual harassment, and retaliation claims brought under the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL). In doing so, the court held that because the employer did not compensate the intern, she was not an "employee" as recognized under the NYSHRL and NYCHRL. However, the court ruled that she was not precluded from moving forward with her claim that the defendant refused to hire her at the conclusion of her internship because of unlawful gender discrimination. *Wang v. Phoenix Satellite Television US, Inc.*, No. 13 Civ. 218 (PKC), U.S. District Court for the Southern District of New York (October 3, 2013).

Lihuan Wang was a graduate student working for Phoenix Satellite Television US, Inc. as an unpaid intern in the company's New York office. Wang alleges that she reported daily to Zhengzhu Liu, who supervised the New York office and personally hired employees and interns. As an intern, Wang assisted in shooting news footage, drafting scripts, and editing video footage. She claims that after two weeks of work she began proposing her own stories and appearing on camera—responsibilities that were not typically entrusted to interns.

As a result of these achievements, Wang alleges that she asked Liu about permanent employment. According to Wang, Liu invited her to his hotel room to discuss future employment and, once there, told her she had beautiful eyes and attempted to kiss and grab her. After she rejected his advances, Wang claims, Liu no longer expressed interest in hiring her. Wang also claims that she later contacted Liu again to inquire about employment upon graduation but rejected his offer to join him on a weekend trip to Atlantic City to discuss job opportunities. Wang filed suit against Phoenix, which moved to dismiss the complaint.

Whether an unpaid intern qualifies as an employee under the NYCHRL, as expanded by New York City's Restoration Act of 2005, was an issue of first impression in the Second Circuit and New York courts. Judge P. Kevin Castel of the Southern District of New York ultimately held that an unpaid intern cannot bring an employment discrimination case pursuant to the NYCHRL. Notwithstanding the broadening of the NYCHRL beyond the NYSHRL and federal law as a result of the 2005 Restoration Act, Judge Castel reasoned that, because the NYCHRL only applies to "employers," its protection can only extend to compensated employees.

Beyond this statutory construction, Judge Castel cited analogous interpretations of the NYSHRL and Title VII of the Civil Rights Act of 1964, as well as the legislative history of the 2005 Restoration Act, which supports the proposition that individuals must receive some remuneration to qualify as an employee. However, Judge Castel permitted Wang's failure-to-hire claim to proceed given her allegations that Phoenix had posted a job vacancy and that Wang had attempted to apply for that vacancy in her discussions with Liu.

As we covered in [the September 2013 issue of the \*New York eAuthority\*](#), the issue of whether employers may avoid paying interns has created risk and confusion under the minimum wage provisions of the Fair Labor Standards Act (FLSA). Although Judge Castel's decision provides a well-reasoned analysis under the NYCHRL and NYSHRL from an employer's perspective, it nevertheless appears to run contrary to case law which looks to an intern's job duties when determining whether he or she is an "employee" as defined under the FLSA. In other words, employers may be caught in a situation in which complying with the

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FLSA's mandates could expose them to liability under the NYCHRL and the NYSHRL.. Not surprisingly, however, a bill is already pending in the New York State Senate that would provide broader anti-discrimination protection to unpaid interns under the NYSHRL. In addition, presumptive mayoral elect Bill de Blasio and members of the New York City Council have indicated their support for similar legislation under the NYCHRL. If and when the NYCHRL and NYSHRL are expanded to cover unpaid interns, employers will have clarity on the protections afforded to their interns.

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