

## New York Enacts Anti-Discrimination Legislation Protecting Interns in the Workplace

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New York Governor Andrew Cuomo has signed legislation amending the New York State Human Rights Law (NYSHRL) to protect unpaid interns against workplace discrimination and retaliation.

Protected categories under the New York State Human Rights law include age, creed, race, color, sex, sexual orientation, national origin, marital status, disability, military status, domestic violence victim status, arrest record, conviction record and predisposing genetic characteristics.

New York joins Oregon, Washington, D.C., and New York City as jurisdictions that expressly protect unpaid interns against discrimination and harassment in the workplace.

State Senator Liz Krueger introduced the legislation following an October 2013 decision from Judge P. Kevin Castel of the Southern District of New York holding that unpaid workers had no redress for claims of discrimination or harassment because they did not receive compensation.

While the new law clearly extends protection to *unpaid* interns, who are not entitled to wages, litigation continues over whether individuals classified as interns by businesses are misclassified and entitled to minimum wage under federal and, as applicable, state law.

### Covered Individuals

Under the new law, which was signed on July 22nd and went into effect immediately, “interns” are persons who perform work for an employer for the purpose of training *and*:

- there is no commitment by the employer to hire the individual at the end of the training period;
- there is an agreement between the individual and the employer that the individual is not entitled to wages; *and*
- the work performed meets the following four criteria: (1) it provides or supplements training that could enhance the individual’s employability; (2) it benefits the individual; (3) it does not displace regular employees; and (4) it is performed under close staff supervision.

### Prohibitions

Employers are prohibited from engaging in the following acts against individuals who meet the definition of an intern:

- discriminating on the basis of a protected category and retaliating against an individual for opposing discrimination with respect to: the handling and treatment of their application; hiring; terms, conditions, or privileges of employment (as an intern); and discharge;

producing statements, advertisements, publications, or internship (employment) applications that express (or are intended to express) limitations, specifications, or discrimination on the basis of a protected category;  
compelling an intern who is pregnant to take a leave of absence, unless the pregnancy prevents her from performing the activities associated with her position in a reasonable manner; and  
sexual harassment or harassment on the basis of a protected category.

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New York employers should ensure their organizations apply all of their equal employment opportunity and anti-harassment policies and principles to interns, as they do employees.

If you have any questions regarding this or other legislation affecting the workplace, please contact the Jackson Lewis attorney with whom you regularly work or Richard I. Greenberg, at [GreenbeR@jacksonlewis.com](mailto:GreenbeR@jacksonlewis.com), Susan M. Corcoran, at [Susan.Corcoran@jacksonlewis.com](mailto:Susan.Corcoran@jacksonlewis.com), Christopher Valentino, at [ValentiC@jacksonlewis.com](mailto:ValentiC@jacksonlewis.com), Daniel J. Jacobs, at [JacobsD@jacksonlewis.com](mailto:JacobsD@jacksonlewis.com), or Ellen M. Bandel, at [Ellen.Bandel@jacksonlewis.com](mailto:Ellen.Bandel@jacksonlewis.com).

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