

LAW & GOVERNMENT

Albany revamps rules on intern harassment, pay

Critics: Law supports common sense, but doesn't change much

By JACQUELINE BIRZON

A new state statute gives unpaid interns the same workplace rights as paid interns and employees.

But according to some attorneys, the amendment – designed to give the 21st century intern a leg to stand on in court – will effect little change in employer-intern relations.

The fourth state to officially bar employers from sexually harassing or otherwise discriminating against unpaid interns, New York has overturned an October 2013 ruling by federal District Judge Kevin Castel that declared unpaid interns ineligible to pursue

claims of harassment or workplace discrimination. Following Oregon's lead, Albany lawmakers on July 28 amended the New York State Human Rights Law to redefine "intern" to mean a person who performs work for an employer for the purpose of training under a set of predefined circumstances. The amended law also extends protections to unpaid interns who have oral, rather than written, agreements that they will work for, but not be paid, by the company.

Despite the effort to increase the number and type of interns protected by the NYSHRL, some Long Island attorneys say the new law is too limited in scope. Chris Valentino, managing shareholder for the Jackson Lewis law firm in Melville, said the amendment is



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AVROHAM GEFEN: A "double-edged sword" for employers.

Photo by Bob Gigliano

New York tightens rules on unpaid interns

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a purely a legal means to reinforce common sense among employers.

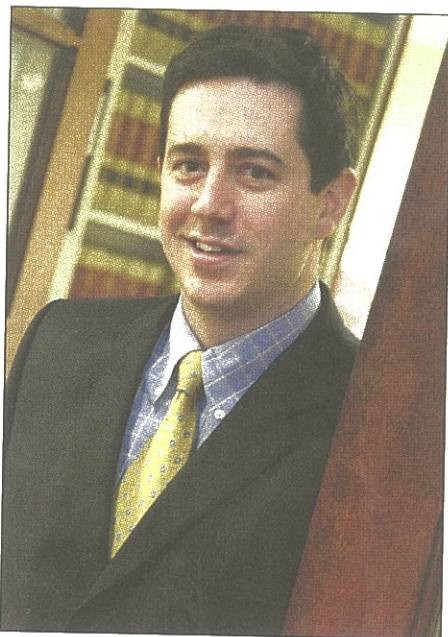
"What this does is it closes a loophole," Valentino said. "From an employer's perspective, it's not a game-changer, because most employers are going to be treating interns as employees for purposes of enforcing their anti-discrimination policies anyway."

Still, the law – which was unanimously passed by the state Assembly and subsequently approved by the state Senate – does informally provide businesses with best-practice legal guidelines for how interns should be treated, Valentino noted.

"It really brought to light an open area under the law that interns [prior to the law] have no protection from discrimination or harassment in the workplace," he said.

Some critics note the law does little to protect unpaid interns, who will only be treated as employees in situations concerning civil rights – though the amendment does extend protections to interns who are not part of a "formal academic program" and do not receive compensation for their work.

Some companies, noted Avrohom



CHRIS VALENTINO: Reinforcing common sense.

Photo by Bob Gigliano

Gefen, associate at the Lake Success-based Vishnick McGovern Milizio law firm, take on college students to perform clerical work, eliminating the need to give overtime pay to full-time employees. In those cases, Gefen argued, companies that view unpaid internships as "free

summer labor" should be required to compensate interns.

"In that case, there's no question that interns must get paid minimum wage," the attorney said. "It's very hard to argue that filing papers is for the benefit of the intern."

As a best-practice measure, businesses can craft written internal policies for intern-related matters to ensure managers and interns understand intern rights regarding harassment and compensation. That's especially important at smaller companies with smaller budgets, according to Gefen, as larger companies with ample financial resources may be more cognizant of the legal constraints surrounding unpaid interns.

"From an employer's perspective, [the law] gives a certain clarity which is always valuable in business, so you know what your problems are," Gefen said. "But obviously, it may increase the costs, so it's a double-edged sword for employers."

On top of establishing intern protections, the new law notes the state's previous "failure to protect interns ... is bad social policy" and "inconsistent with the overarching purpose of the Human Rights Law."

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