Discrimination

New York Governor Signs Legislation Protecting Interns from Discrimination

New York Gov. Andrew M. Cuomo (D) signed a measure (A. 8201) July 22 that grants interns protections against sexual harassment and employment discrimination.

The bill, which took effect immediately, provides unpaid interns with the same protections as paid employees under the state’s human rights law.

“This bill fills a gap in New York’s civil rights laws by specifying that unpaid interns should be protected from discrimination and sexual harassment,” David Yamada, director of the New Workplace Institute at Suffolk University Law School in Boston, told Bloomberg BNA July 24.

“Such safeguards shouldn’t be dependent upon the results of pending legal claims over whether interns are entitled to compensation as employees. The new law will likely have a ripple effect by encouraging bills in other states as well,” Yamada said.

Follows Action by Oregon, NYC. The bill is modeled after similar legislation in Oregon and comes some four months after New York City Mayor Bill de Blasio (D) signed a bill granting similar protections in New York City (73 DLR A-15, 4/16/14).

Under the bill, interns may not be discriminated against based on their age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status.

Employers are prohibited from discriminating against interns or prospective interns with respect to hiring, discharge, terms or conditions of employment, applications for internships, advertising, application forms or application inquiries. They are also prohibited from retaliating against interns for opposing prohibited practices and from forcing interns to take pregnancy leave.

The bill codifies both the quid pro quo and the hostile environment tests for sexual harassment.

Response to 2013 Court Decision. The bill stems from a 2013 decision by a federal court in New York that denied a sexual harassment claim by an intern because she was not an employee within the meaning of the law (194 DLR AA-1, 10/4/13).

Maurice Pianko, founder and lead attorney for Intern Justice, told Bloomberg BNA in a July 24 e-mail that the bill closes “an obvious loophole” and would protect “hundreds of thousands of interns across the state.”

“Employers across the state can no longer evade every legal liability that state government has imposed through the branding of their workers as interns,” said Pianko of the Pianko Law Group PLLC. “No longer can courts in New York State issue rulings giving employers carte blanche permission to underpay, abuse, and harass interns.”

The group Intern Labor Rights, however, said the bill didn’t go far enough because it failed to protect trainees, fellows and volunteers. In a June 27 letter to the governor, the group said the legislation failed to prevent “employers’ widespread noncompliance with state and federal labor laws regarding unpaid trainees, and effectively excludes interns in such circumstances from the state’s civil rights protections.”

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