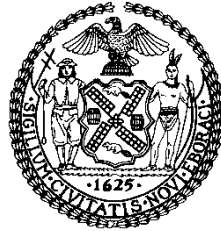


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THE COUNCIL

Committee Report of the Governmental Affairs Division

Robert Newman, Legislative Director
Alix Pustilnik, Deputy Director, Governmental Affairs

COMMITTEE ON CIVIL RIGHTS

Hon. Darlene Mealy, Chair

Tuesday, March 25, 2014

Prop. Int. No. 173-A: By Council Members Vacca, Chin, Cohen, Constantinides, Lancman, Mealy, Torres, King, Arroyo, Cumbo, Rosenthal and Eugene (by request of the Manhattan Borough President)

Title: A Local Law to amend the administrative code of the city of New York, in relation to the prohibition of discrimination against interns.

I. Introduction

On Tuesday, March 25, 2014, the Committee on Civil Rights, chaired by Council Member Darlene Mealy, will vote on Proposed Introductory Bill Number 173-A (“Prop. Int. No. 173-A”), a local law to amend the administrative code of the city of New York, in relation to the prohibition of discrimination against interns. The Committee previously held a hearing on Introductory Bill Number 173 (“Int. No. 173”) on March 17, 2014.

II. Background

Internship programs give employers the opportunity to find talent, while providing interns exposure to an industry and increased access to full-time employment opportunities.¹ It is important to note that internship programs vary – some provide compensation, while others are unpaid and offer academic credit or promises of future employment in lieu of pay. Although interns may be any age, according to the National Association of Colleges and Employers internship programs are considered to be an essential component of employers’ college recruiting programs.² Additionally 69 percent of companies with 100 or more employees offered full-time jobs to their interns in 2012.³ The internship experience is also an integral part of a professional education for those enrolled in college and graduate level programs.⁴ For example, 63 percent of 2012 college graduates completed at least one internship and 28 percent completed two or more internships.⁵

¹ Jacquelyn Smith, Internships May Be The Easiest Way To A Job in 2013, Forbes, Dec. 6, 2012, <http://www.forbes.com/sites/jacquelynsmith/2012/12/06/internships-may-be-the-easiest-way-to-a-job-in-2013/> (last visited Mar. 11, 2014).

² National Association of Colleges and Employers, *2013 Internship & Co-op Survey: Executive Summary*, 3, <https://www.nacweb.org/uploadedFiles/Content/static-assets/downloads/executive-summary/2013-internship-co-op-survey-executive-summary.pdf> (last visited Mar. 11, 2014).

³ Smith, *supra* note 1.

⁴ See David C. Yamada, *The Employment Law Rights of Student Interns*, Connecticut Law Review, Fall 2002, at 217.

⁵ Smith, *supra* note 1.

Of particular relevance to the legislation being considered today, those in unpaid internships are in a uniquely vulnerable position. Specifically, a recent decision out of the United States District Court for the Southern District of New York held that unpaid interns are not entitled to protections under federal and local civil rights laws. As a result, such interns could be viewed as not being protected from discrimination and harassment.

The decision, Wang v. Phoenix Satellite Television US, Inc., 2013 WL 5502803 (S.D.N.Y. 2013), concerned Ms. Wang, the plaintiff, who was a graduate student intern with the defendant corporation, Phoenix Satellite Television. Ms. Wang received no compensation during her internship. In her complaint, Ms. Wang alleged that, among other things, her supervisor sexually harassed her in violation of the New York City Human Rights Law (“NYCHRL” or “Human Rights Law”).⁶ But, the court found that Ms. Wang could not bring an employment discrimination claim under the Human Rights Law because she had not been compensated, a prerequisite to the formation of an employment relationship. The court held that “the plain meaning of the NYCHRL...as well as the legislative history of the NYCHRL all confirm that the NYCHRL’s protection of employees does not extend to unpaid interns.”⁷

Int. No. 173 was introduced into the City Council in an effort to provide explicit protections to unpaid interns in the Human Rights Law. The Committee on Civil Rights held a hearing on Int. No. 173 on March 17, 2014.

III. Amendments to Prop. Int. No. 173-A

Following the March 17, 2014 hearing on Int. No. 173, certain changes were made to the legislation. Among these changes are:

⁶ Wang v. Phoenix Satellite Television US, Inc., 2013 WL 5502803, 3 (S.D.N.Y. 2013).

⁷ *Id.* at 9.

- Amendments to the definition of “intern” in order to facilitate appropriate relief under the Human Rights Law and the Commission on Human Rights’ (“Commission”) ability to investigate complaints.
- The inclusion of specific language in Prop. Int. No. 173-A stating that all provisions in the Human Rights Law that apply to employees also apply to interns.
- A provision stating that all interns, regardless of whether they receive a wage, are protected under the Human Rights Law.

IV. Analysis of Prop. Int. No. 173-A

Prop. Int. No. 173-A would amend the Human Rights Law: (i) to define the term “intern;” (ii) clarify that interns are entitled the same protections under the Human Rights Law as employees; and (iii) therefore prohibit employers from discriminating against interns on the basis of their actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage or citizenship status, or status as a victim of domestic violence, sex offenses or stalking. An “intern” is defined as an individual who performs work for an employer on a temporary basis whose work provides or supplements training given in an educational environment where the employability of the individual performing the work may be enhanced, experience is provided for the benefit of the individual performing the work, and the work is performed under the close supervision of staff. The term “intern” includes individuals who meet these requirements regardless of whether they receive pay. Finally, Prop. Int. No. 173-A provides that the provisions under chapter one (“Unlawful Discriminatory Practices”) of the Human Rights Law that relate to employees relate to interns.

Penalties

Pursuant to Prop. Int. No. 173-A, an unpaid intern who believes that he or she has been unlawfully discriminated against in violation of the Human Rights Law may bring an action in court for damages, injunctive relief and other appropriate remedies,⁸ or make a complaint to the Commission on Human Rights.⁹ Upon a finding that an employer has engaged in an unlawful discriminatory practice in violation of the Human Rights Law, the Commission may issue an order to the employer to “cease and desist” the unlawful discriminatory practice.¹⁰ In addition, the Commission could require the employer to hire a prospective employee; award back pay and front pay; or pay compensatory damages, among other things.¹¹ Under this bill, failure to comply with such an order may result in a civil penalty of no more than \$50,000 and an additional civil penalty of no more than \$100 per day.¹² Should the Commission find that an employer engaged in an unlawful discriminatory practice, it may impose a civil penalty of \$125,000.¹³ If the unlawful discriminatory practice resulted from the employer’s “willful, wanton or malicious act,” the Commission may impose a civil penalty of not more than \$250,000.¹⁴ Should a person willfully violate an order of the Commission, he or she may be guilty of a misdemeanor that is punishable by imprisonment for not more than one year, or by a fine of not more than \$10,000, or by both.¹⁵ This penalty structure is consistent with other provisions of the Human Rights Law that seek to prohibit workplace discrimination.

Effective Date

This local law would take effect 60 days after its enactment into law.

⁸ Admin. Code §8-502.

⁹ Admin. Code §8-109.

¹⁰ Admin. Code §8-120(a).

¹¹ *Id.*

¹² Admin. Code §8-124.

¹³ Admin. Code §8-126(a).

¹⁴ *Id.*

¹⁵ Admin. Code §8-129.

Prop. Int. No. 173-A

By Council Members Vacca, Chin, Cohen, Constantinides, Lancman, Mealy, Torres, King, Arroyo, Cumbo, Rosenthal and Eugene (by request of the Manhattan Borough President)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the prohibition of discrimination against interns.

Be it enacted by the Council as follows:

Section 1. Section 8-102 of chapter one of title eight of the administrative code of the city of New York is amended by adding a new subdivision 28 to read as follows:

28. The term “intern” shall mean an individual who performs work for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the close supervision of existing staff. The term shall include such individuals without regard to whether the employer pays them a salary or wage.

§ 2. Section 8-107 of chapter one of title eight of the administrative code of the city of New York is amended by adding a new subdivision 23 to read as follows:

23. The provisions of this chapter relating to employees shall apply to interns.

§ 3. This local law shall take effect in sixty days.

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