

Protecting Unpaid Interns and Accommodating Pregnant Women in the Workplace

Protections for Unpaid Interns

Unpaid interns do not have the right to compensation, nor are they entitled to promises of future employment. Yet, thanks to legislation signed by Gov. Pat Quinn last month, unpaid interns will soon enjoy many of the protections extended to employees in Illinois, including the right to be free from sexual harassment.

Illinois is just the third state to bring unpaid interns under the umbrella of workplace protections, joining New York and Oregon, and one of only five jurisdictions, including New York City and Washington, D.C., to do so. The amendments to the Illinois Human Rights Act (the Act) take effect on January 1, 2015.

The legislation changes the way the word “employee” is defined under the Act to include unpaid interns. To qualify as an unpaid intern, an individual must perform work for an employer under the following circumstances:

- The employer makes no commitment to hire the individual at the end of the internship.
- The individual and the employer agree that the individual is not entitled to wages for work performed.
- The work performed meets the following criteria:
 - It supplements training given in an educational environment in a way that may enhance the individual's employability.
 - It provides experience for the benefit of the individual.
 - It does not displace regular employees.
 - It is performed under close supervision.
 - It does not provide any immediate advantage to the employer and may, at times, impede the employer's operations.

The anti-sexual harassment provision applies to “any person employing one or more employees,” which means nearly every Illinois employer is subject to it. Employers should take the following steps now to prepare for January 1:

- Know that unpaid interns will be protected by anti-harassment legislation.
- Reassess the risks and benefits of unpaid intern programs in light of changes to the law.
- Revise organizational anti-harassment policies and internal complaint procedures to explicitly apply them to unpaid interns just as to employees.
- Train managers and employees to understand that unpaid interns are protected from harassment.
- Provide unpaid interns with workplace harassment policies and complaint procedures at the start of their internships.

Accommodations for Pregnant Women

Other recently enacted amendments to the Illinois Human Rights Act provide increased job protections for pregnant women and require that employers make reasonable accommodations in the workplace for women with pregnancy-related conditions if requested. These amendments also take effect on January 1, 2015, and apply to any person employing one or more employees.

The new law provides a non-exclusive list of examples of reasonable accommodations, which include:

- More frequent or longer bathroom breaks.
- Limits on heavy lifting and assistance with manual labor.
- Access to places to sit.
- Break space for breast-feeding.
- Temporary transfer to light duty or a less strenuous position.
- Part-time or modified work schedule.
- Providing leave.

An employer may not require an employee to accept a reasonable accommodation that she did not request, including leave. An employer may, however, request medical documentation as proof of an employee's pregnancy-related condition before agreeing to a request for reasonable accommodation(s). The information sought must be job-related and consistent with business necessity, as well as limited to the following:

- The medical justification for the accommodation(s).
- A description of the reasonable accommodation(s) that are medically advisable.
- The date the accommodation(s) became advisable.
- The likely duration of the accommodation(s).

An employee has a duty to comply with an employer's request for this information. An employer, in turn, is required to provide a reasonable accommodation that is requested unless it can demonstrate that doing so would impose an undue hardship on the employer. The factors in making this determination are:

- The nature and cost of the accommodation.
- The facility's overall financial resources, the number of people employed there, the effect of the accommodation on the facility's expenses, and the accommodation's impact on the facility's operations.
- The employer's overall financial resources and the overall size of the business.
- The type of operations of the employer.

An employer need not create new employment positions for pregnant employees or applicants, unless that employer would do the same for other classes of employees needing accommodations. An employer must, however, reinstate an employee affected by pregnancy-related conditions to her original job or an equivalent position unless the

employer can demonstrate that doing so would impose an undue hardship on the employer.

Additionally, employers will be required to post an Illinois Department of Human Rights notice on their premises, advising applicants and employees of their pregnancy accommodation rights, and must also include that information in their employee handbooks.

An Equal Employment Opportunity Commission study found that charges of pregnancy discrimination filed by employees increased 71 percent between 1992 and 2011. The amendments to the Act make employers even more vulnerable to legal action for failing to adequately protect and accommodate employees with pregnancy-related conditions. Before the new law takes effect, employers should:

- Review internal policies on reasonable accommodations that may be requested by employees.
- Update practices of obtaining medical documentation to comply with the amendments.
- Obtain the Illinois Department of Human Rights notice and post it on the premises as soon as it becomes available.
- Revise employee handbooks and related policies, including Family and Medical Leave Act policies, to include the required information about pregnancy-related accommodations.
- Develop procedures for adequately responding to requests for reasonable accommodations and train supervisors in those procedures.

The Employment Litigation & Counseling Practice Group at Swanson, Martin & Bell, LLP, has the experience and expertise to help employers take these protective measures and navigate through this rapidly changing field of law. Contact us at (312) 321-9100 or visit our website at www.smbtrials.com.

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