

Return of the Intern

By Reg P. Wydeven
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During summers in law school, I was lucky enough to get a position clerking at our law firm. As a summer intern, I did research projects, helped draft briefs, and assisted in organizing files. I also moved filing cabinets, changed light bulbs, replaced the empty water cooler jugs and basically did anything else that anyone asked.

I learned a ton about the law, legal writing and communicating with clients. I was also extremely fortunate to actually get paid for my internship. And while I'm sure it was extremely difficult for the other employees, I was not sexually harassed. Other interns weren't as lucky.

Lihuan Wang is a Chinese national who had an unpaid internship at Phoenix Satellite Television US, a Chinese-language TV provider in New York. Wang hoped to be hired for a full-time position at the station.

During her internship, however, Wang's supervisor lured her to his hotel room, where he allegedly groped her and tried to kiss her. Wang spurned his advances, and as a result, her supervisor refused to hire her for the full-time position.

Obviously, Wang brought a lawsuit against Phoenix for a textbook case of sexual harassment: a supervisor taking retaliatory action against an employee for rebuffing him. Only U.S. District Court Judge P. Kevin Castel kicked out her case.

Castel ruled that as an unpaid intern, Wang is not technically considered an "employee" under New York law. Therefore, without being an employee, Wang did not have standing to bring the lawsuit.

Wang falls under a loophole in New York law that does not extend sexual harassment protection to unpaid interns. While a few states, such as Oregon and the District of Columbia, do have laws protecting interns, most do not, like New York. I raise this issue not to give employers the green light to sexually harass unpaid interns, but rather to increase awareness of the law's shortcoming and as a call to action for legislators to extend protection to unpaid interns.

Because Wang's internship could be considered an extended job interview, some legal experts believe she should have been treated as a job applicant, where protection would apply. Judge Castel disagreed.

While he rejected her sexual harassment claim, Castel did allow Wang to proceed with the second component of her complaint. In addition to the harassment, Wang claims that she was retaliated against for rejecting her supervisor's advances by being denied a permanent position with the company.

Clearly interns are on the bottom of a company's totem pole. They get the worst assignments, get little or no pay, and are treated as second class citizens. Allowing them to be subjected to sexual harassment just adds insult to injury.

I know there is a Monica Lewinski joke in here somewhere, but since the column has moved to Sundays, I should probably avoid it. Have a great week!

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