

# Illinois Enacts Legislation Protecting Unpaid Interns against Sexual Harassment in the Workplace

By Kirsten A. Milton

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Illinois has become the fifth jurisdiction to expand its workplace laws to protect unpaid interns — joining New York, Oregon, Washington, D.C., and New York City.

On August 25, 2014, Governor Pat Quinn signed legislation amending the Illinois Human Rights Act (“IHRA”) to protect unpaid interns against workplace sexual harassment. The amendment ([Public Act 98-1037](#)), which goes into effect on January 1, 2015, expands the definition of “employee” under the IHRA to include unpaid interns for purposes of sexual harassment.

## Covered Individuals

Under the new Illinois law, “[a]n unpaid intern is a person who performs work for an employer” *and*:

1. there is no commitment by the employer to hire the individual at the end of the individual’s tenure;
2. there is an agreement between the individual and the employer that the individual is not entitled to wages; *and*
3. the work performed meets the following five criteria:
  - (i) it supplements training in an educational environment that could enhance the individual’s employability;
  - (ii) it benefits the individual;
  - (iii) it does not displace regular employees;
  - (iv) it is performed under close staff supervision; and
  - (v) it provides no immediate advantage to the employer, in fact, it may impede the employer’s work.

\* \* \*

Illinois employers should ensure their organizations apply all of their anti-harassment policies and principles to unpaid interns, as they do to their employees.

Whether unpaid interns qualify as “employees” under the Fair Labor Standards Act and state wage-and-hour laws has become an increasingly contentious issue in recent years in federal and state lawsuits. While the new Illinois law clearly extends protection from sexual harassment to *unpaid* interns, who are not entitled to wages, litigation continues over whether individuals classified as interns by businesses are misclassified and entitled to minimum wage under federal and, as applicable, state law.

If you have any questions regarding this or other legislation affecting the workplace, please contact the Jackson Lewis attorney with whom you regularly work.

## Meet the Author



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