

Unpaid Intern is not an Employee, Cannot Maintain Hostile Work Environment Claim

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A broadcast and digital journalism student began working at a Chinese-language news station as an unpaid intern. As an intern, she reported directly to the bureau chief, assisted the bureau's reporters with shooting news footage, drafted scripts, edited videos, and appeared on camera to present certain stories. The intern sought a full-time position and was told that she may be able to obtain a permanent position later if she could obtain a work visa.

The intern claimed that two weeks after she started, the bureau chief propositioned her, but she rejected him. Neither she nor the chief brought up the incident after that, but the intern claimed that the bureau chief no longer expressed interest in hiring her permanently. Her internship ended, but several months later, she contacted him to discuss a permanent position. He allegedly asked her to go away for the weekend with him to discuss, but she declined, fearful that he would proposition her again.

The intern filed suit against the company alleging hostile work environment and failure to hire in violation of the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL). The company moved to dismiss on the grounds that she lacked standing to pursue the hostile work environment claim given that she was not an employee. This was an issue of first impression for the court.

The U.S. District Court for the Southern District of New York thus considered whether an unpaid intern could bring an employment discrimination claim pursuant to the NYCHRL. The court looked to the plain language of the statute and found that it makes clear that the provision's coverage only extends to employees. This is further confirmed by analogous interpretations of Title VII and the NYSHRL, and a review of the legislative history of the NYCHRL. Thus, the court concluded that the intern could not maintain her hostile work environment claim under the NYCHRL because she was not an employee.

The court did, however, find that the intern alleged sufficient facts in order to pursue her failure to hire claims under the NYSHRL and NYCHRL, and thus, the suit was not dismissed in its entirety.

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