



MEMORANDUM

TO: Members of the Senate Labor Committee
FROM: Alida Kass, Chief Counsel
SUBJECT: NJCJI's Opposition to Senate Bill 539
DATE: June 5, 2014

The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state's largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose S-539.**

Unpaid internships are an interesting trade-off. At a point in their careers when their skill set and work product have a relatively low value, young people can nevertheless gain experience and develop relationships in exchange for free work. Especially in a slow economy, internships can be an essential first step for young people beginning their careers.

Our concern is that by extending LAD (Law Against Discrimination) and CEPA (Conscientious Employee Protection Act) to unpaid interns, this bill would extend workplace protections that are not well-suited to the unpaid internship context. Doing so would expand the liability risk entailed in offering internships, and as a result it would result in fewer internships being made available to the young people who need them most.

New Jersey's LAD and CEPA are two of the most aggressive pieces of employment legislation found nationwide, and neither is well-suited to an application to unpaid interns.

CEPA was designed primarily for the protection of the public welfare. The "core value" embodied in the law is that employees should be encouraged to object to illegal, fraudulent or harmful activity to protect the public welfare.

As a result, it protects employees who object to what they perceive as violations of laws or even of "public policy" that is not actually illegal. These employees are protected from any "retaliatory" adverse employment action even if they were incorrect in their objections: a good faith belief that the law or public policy has been violated will suffice.

As applied to unpaid interns, there are two main problems. First: unpaid interns typically lack the experience and judgment necessary to actually raise objections that are likely to be of benefit to the public welfare. Second, the fact that a "good faith belief" is sufficient to warrant protections means that those errors can wind up placing employers in significant legal jeopardy.

The LAD is similarly ill-suited to an application to unpaid interns. One of the primary rationales behind providing a cause of action for a hostile work environment based on a protected classification is the concern that employees might be subjected to discriminatory treatment and yet be unable to afford to quit their jobs.

Unpaid interns, by contrast, have a readily available remedy to a work environment they find unsatisfactory: they find a new internship.

In fact, because the work environment is itself the primary benefit being offered to unpaid interns, employers have every incentive to treat their interns well. In this sense, legislation that increases the risk and thus the cost of offering internships serves primarily to reduce the availability of those alternatives, which would otherwise be the easiest solution to the problem.

Legislative protections are not cost-free. And the costs are not borne exclusively by “bad” employers who mistreat interns. The reality is that because an incremental expansion of liability risk means an incremental increase in cost, this bill would ultimately mean fewer internships are made available. It also means that those employers who do offer internships will seek to limit their exposure - rather than take a chance on an unknown student, who is maybe the first in her family to attend college, they will opt for the child of a friend or colleague.

Unfortunately, this is a bill that would ultimately mean fewer opportunities for those who need unpaid internships the most. I urge the committee to hold the bill.

The New Jersey Civil Justice Institute respectfully requests that you vote no on S-539.