Internships and Harassment: A Follow-Up about Avenues of Redress

MICHAEL BUGEJA

In the summer 2018 issue of The Department Chair, I outlined possible avenues of redress for unpaid interns caught between Titles VII and IX, both of which provide protection in cases of sexual harassment and other forms of discrimination (Bugeja 2018).

This is a follow-up concerning what the faculty at the Greenlee School of Journalism and Communication at Iowa State University did after publication of that article.

First, some background. Title VII of the Civil Rights Act of 1964 prohibits companies from discriminating against employees on the basis of sex, race, color, national origin, and religion. Title IX of the Education Amendments Act of 1972 prohibits discrimination based on sex/gender (including sexual misconduct) against any person in an educational program receiving federal financial assistance.

To claim Title VII rights, a person must be an employee. Unpaid interns do not have that status.

If an unpaid internship is part of a university-sponsored program, enforcement of Title IX rights is limited, based on the location of the harassment. For example, the university would not have the right or obligation to take certain actions on the premises of a third-party provider. But depending on evidence, the institution can reasonably investigate claims of discrimination by a student and take responsible steps to prevent further discrimination. Typically, that would entail terminating the internship in question and banning future ones at that company until appropriate action was taken to remedy infractions.

As such, professional disciplines requiring or recommending internships have an obligation to inform students about the legal limitations of unpaid positions. For starters, as soon as any incident occurs, they should report it to their faculty adviser or internship coordinator, who in turn has an obligation to inform the appropriate campus officials. Further, departments sponsoring internships themselves. Some internships are done without credit; others for one to six or more credit hours. Some students receive letter grades upon completion of internships; others are graded on pass/fail or not at all. Some departments require internships for graduation; others merely recommend internships that never appear on transcripts. Some departments ask faculty or staff to monitor interns away from campus; others leave them on their own.

One thing, however, should be considered: Is the internship paid or unpaid?

Unpaid interns may receive stipends from a department or other source as a legitimate part of their educational program. However, if any funds are related to and in exchange for work, then it is a wage and the intern is an employee.

Paid interns usually are covered by the company’s harassment policies, which vary. Those students are considered employees because they draw a salary. Most providers are bound legally by Title VII.

Currently, federal courts are determining the status of unpaid interns, with respect to sex discrimination, and again, including sexual misconduct. In Jane Doe v. Mercy Catholic Medical Center, the Third Circuit Court of Appeals disagreed with decisions from the Fifth and Seventh Circuit Courts of Appeals, which have held that Title VII “provides the exclusive remedy for employees alleging discrimination on the basis of sex in federally funded educational institutions” (Francis 2017). The Third Circuit stated that “Title IX provides an alternative remedy to address such claims of discrimination” because the internship experience is educational (Francis 2017).

Only a handful of states have passed nondiscrimination legislation to protect unpaid interns. They include Maryland, New Jersey, New York, Oregon, California, Connecticut, and the District of Columbia.

Title IX requires schools to take steps to prevent and remedy sex- and gender-based harassment, including sexual violence that occurs within its educational programs and activities. Registered students can take advantage of these resources, but internships working off campus in other cities, states, or countries are at a disadvantage if an alleged harasser is not an employee or agent of the educational institution.

After publication of my 2018 article, the
Greenlee School appointed a subcommittee to investigate what we could do to mitigate the risk of unpaid internships. Internships here are required for advertising, journalism, and public relations majors as part of the school’s capstone experience. Students work with faculty and staff advisers monitoring a paid or unpaid position providing at least four hundred hours overseen by a properly credentialed supervisor. The Greenlee subcommittee accessed case law and explored tenets of the Fair Labor Standards Act (FLSA), which requires for-profit employers to pay employees (US Department of Labor 2018). For-profit companies that offer unpaid internships are judged against the FLSA primary beneficiary test. The courts use the following factors to determine who benefits most from the relationship, the intern or the business:

1. The training is similar to what the student would receive in an educational setting.
2. The internship benefits the student and not the company.
3. The intern is properly supervised.
4. The intern’s duties do not replace those of a regular employee.
5. The employer enjoys no advantage from the work of the intern; in fact, that work actually may impede operations.
6. The employer does not promise a job at the end of the internship.
7. The employer and the intern both acknowledge that no wages will be paid for time spent in the internship.

The Greenlee subcommittee also found that very few universities were addressing concerns about unpaid internships or alerting their students about risk. One exception is Clemson’s Student Enrichment program in the College of Business, which has posted a comprehensive public notice titled “Know Your Rights about Unpaid Internships with For-Profit Companies” (Clemson University n.d.). It includes sections on workers’ compensation, noting that employees injured on the job can receive benefits for health-care bills and loss of pay. “However, if an unpaid intern were to get hurt on the job, the company would not be required to pay any damages to the unpaid intern since they do not meet the official definition of an employee.” Its section on discrimination informs students that they cannot sue for sexual harassment if they are performing duties in an unpaid internship. Clemson’s notice includes this “bottom-line” recommendation: “If you want to ensure you have rights at the internship workplace, be certain the internship is PAID. You are paying for the course through your tuition dollars.”

The Greenlee subcommittee recommended that we inform our students about their rights in paid and unpaid internships. In ad-

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**Greenlee School of Journalism and Communication Professional Media Internship: Expectations for Organizations Using Interns**

The Greenlee School of Journalism and Communication appreciates businesses and organizations that select our students for valuable internship experiences. The internship experience provides businesses and organizations with skilled help and assistance. In exchange, our students are seeking real-world experience, training, guidance, and feedback in a learning-oriented environment. The Greenlee School has developed the following expectations of organizations using our student-interns.

**A. Meaningful Educational Experience Statement**

1. Provide a safe workplace and advise the student-intern of any hazards associated with the workplace.
2. Provide any training, guidance, and feedback necessary for a safe and meaningful internship experience.
3. Provide work experiences with proper supervision and guidance that are compatible with the student’s coursework and employment goals. It is expected that interns will be given entry-level professional work. Strictly menial and clerical work, such as answering phones, filing, stuffing envelopes, cleaning, moving equipment, and the like, should be kept to an absolute minimum. (Note: For-profit organizations that do not pay their interns should seek legal guidance to ensure that they are in compliance with the Fair Labor Standards Act.)
4. Reimburse the student for any work-related travel or expenses incurred other than to and from work.
5. Provide an evaluation of the student-intern’s performance in the position.

**B. Nondiscrimination and Anti-Harassment Statement**

1. Internship experiences are extended with the understanding that professional employment practices will be followed. Compliance with federal, state, and local laws, as well as Iowa State University’s policy, is a prerequisite for student internships, and the university reserves the right to suspend services without notice if it determines, in its own discretion, that such standards are not being met. Iowa State University is committed to assuring that its programs are free from prohibited discrimination and harassment based on race, ethnicity, sex, pregnancy, color, religion, national origin, physical or mental disability, age, marital status, sexual orientation, gender identity, genetic information, status as a US veteran, or any other status protected by university policy or applicable local, state, or federal law.
2. Iowa State University is also committed to assuring that its programs are free from prohibited sexual harassment and sexual misconduct as defined by applicable local, state, or federal law and in accordance with Iowa State University policy. The university reserves the right to suspend services without notice if it determines, in its own discretion, that a student or students are being subjected to sexual harassment and/or that your company has failed to take prompt remedial measures in response to allegations of sexual harassment and/or sexual misconduct.

(To read the university policy in full, please see www.policy.iastate.edu/policy/discrimination.)
dition, we wanted our internship providers to know that we take sex-based discrimination and misconduct seriously. As such, we worked with our university counsel’s office to come up with a policy to put providers on record about our concerns.

I have shared a copy of our policy in the sidebar to this article. Feel free to use or adapt the policy at your institution with proper guidance from your institution’s attorneys.

Our policy is twofold. In addition to a section on sexual harassment awareness, we request that our providers ensure a meaningful educational experience, including a safe workplace with advice on any potential workplace hazards. Our policy also requests training, guidance, feedback, proper supervision, a professional entry-level experience, and reimbursement for any work-related travel or expenses. The document, to be signed by a supervisor, also advises for-profit organizations that do not pay interns to seek legal guidance to ensure that they are in compliance with the Fair Labor Standards Act.

The Greenlee School also is exploring producing a video about harassment and conducting regular workshops so that students know their rights, risks, and avenues of redress should sexual harassment or other discrimination occur at the internship workplace.

Michael Bugeja, distinguished professor of liberal arts and sciences, teaches media ethics at the Greenlee School of Journalism and Communication. He directed the Greenlee School for fourteen years and has won awards at his institution for outstanding administration in addition to the 2015 Scripps Howard Outstanding Administrator Award. These opinions are his own. Email: bugeja@iastate.edu

References


