

# INTERN LABOR RIGHTS

April 3, 2014

Mayor Bill de Blasio  
City Hall  
New York, NY 10007

Dear Mayor de Blasio:

Every year thousands of young people show up at their jobs in New York City, committed to working hard and learning the skills necessary to advance careers in the city's many vibrant industries. Yet many find themselves shut out of opportunity<sup>1</sup>, exploited<sup>2</sup> and vulnerable to harassment<sup>3</sup>. They are unpaid interns—on the losing end of an exploitative practice.

It may come as a surprise to many who have had what they consider positive experiences working with unpaid interns to learn that the practice has become a cover for billions of dollars of wage theft annually<sup>4</sup>. A combination of forces have contributed to this phenomenon: a historically challenging job market for young adults<sup>5</sup>; the brazenness with which employers substitute paying jobs with internships in violation of federal and state labor law<sup>6</sup>; the under-enforcement of existing laws by under-resourced agencies<sup>7</sup>; the complicity of universities, whose policies fail to account for the effect of unpaid internships on the labor market and often facilitate violation of labor laws<sup>8</sup>; and even the unwitting endorsement of the practice by well-meaning policy makers and employers who themselves may comply with the law but fail to see how this unregulated term<sup>9</sup> has amounted to a blank check in the form of free labor. Many are surprised simply to learn that there is no requirement in law or practice that interns be college students. Indeed, in many industries it is likely that the vast majority of unpaid interns are not students at all, but rather ordinary workers accepting such unpaid positions as the “new normal” at the bottom of the career ladder.

Mr. Mayor, let's make New York City the first city in the United States to eliminate unpaid internship wage theft and begin creating a school-to-work transition that reduces income inequality, improves prospects for a truly diverse and representative workforce, respects the dignity of work and the value of labor, and shows the rest of the country that both employers and employees benefit from a higher standard. To that end, we make the following calls to action:

1. New York City's offices and agencies, the companies it contracts, and the organizations engaging City and City-financed resources<sup>10</sup> should cease hiring unpaid interns or other unpaid workers. Everyone working for the City of New York, its contractors, and City-supported organizations should be paid at least a living wage<sup>11</sup>.

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2. New York City should take affirmative steps to improve compliance with current labor laws and to crack down on widespread violation of both the federal 6-point trainee test<sup>12</sup> and New York State's stricter 11-point test<sup>13</sup>—the standards by which a bona fide trainee is deemed not an employee.<sup>14</sup>
3. New York City should work with Albany to implement a higher legal standard, improving both opportunity and protections for thousands of New York City workers who are currently excluded from full participation in the economy. New York Labor Law should be amended to recognize interns as employees, effectively ending unpaid internships as the practice is currently conducted by requiring employers to pay wages to all interns. New York Human Rights Law should be amended to extend sexual harassment and other anti-discrimination protections to all interns, volunteers, and anybody at worksites otherwise not covered by their status as employees—notwithstanding the recent partial extension of such protections to some unpaid interns by New York City Council bill Intro 173-A, passed March 26.

We look forward to working with you now and in the future.

Sincerely,  
Intern Labor Rights

## References

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1. *Class of 2013: Paid Interns Outpace Unpaid Peers in Job Offers, Salaries*, NATIONAL ASSOCIATION OF COLLEGES AND EMPLOYERS (May 29, 2013), <http://www.naceweb.org/s05292013/paid-unpaid-interns-job-offer.aspx> (“Results of NACE’s 2013 Student Survey show that 63.1 percent of paid interns received at least one job offer. In comparison, only 37 percent of unpaid interns got an offer; that’s not much better than results for those with no internship—35.2 percent received at least one job offer.”).
2. Press Release, *Intern Bridge 2012 National Internship Salary Survey Results to Be Released*, PRWEB (Feb, 7, 2013), <http://www.prweb.com/releases/internbridge/02/prweb10400332.htm> (“64.1% of students need to work second jobs when working an unpaid internship experience, and only 45% of students were able to work more than 30 hours per week in their internships, due in part to the fact that many of them had to work separate jobs just to keep them financially stable.”).
3. See Venessa Wong, *Unpaid Intern Is Ruled Not an ‘Employee,’ Not Protected From Sexual Harassment*, BLOOMBERG BUSINESSWEEK (Oct 8, 2013), <http://www.businessweek.com/articles/2013-10-08/unpaid-intern-not-an-employee-not-protected-from-sexual-harassment>.
4. Ross Perlin, INTERN NATION 124 (1st ed. 2012) (“Using up-to-date, but still conservative figures (500,000 unpaid interns at the 2010 federal minimum wage), the money that organizations save through internship approaches \$2 billion annually.”).
5. Jaison R. Abel, Richard Deitz & Yaqin Su, *Are Recent College Graduates Finding Good Jobs?*, FEDERAL RESERVE BANK OF NEW YORK, 20 CURRENT ISSUES IN ECONOMICS AND FINANCE (2014) at 1, available at [http://newyorkfed.org/research/current\\_issues/ci20-1.pdf](http://newyorkfed.org/research/current_issues/ci20-1.pdf) (“Our analysis reveals that, by historical standards, unemployment rates for recent college graduates have indeed been quite high since the onset of the Great Recession. Moreover, underemployment among recent

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graduates—a condition defined here as working in jobs that typically do not require a bachelor's degree—is also on the rise, part of a trend that began with the 2001 recession.”).

6. See Stephen Suen & Kara Brandeisky, *Tracking Intern Lawsuits*, PROPUBLICA (June 25, 2013) <http://projects.propublica.org/graphics/intern-suits> (showing that as of Oct. 8, 2013, update, in New York City over twenty state and federal wage theft lawsuits have been filed by such unpaid workers, many as class actions).
7. Gordon Lafer, *The Legislative Attack on American Wages and Labor Standards, 2011–2012*, ECONOMIC POLICY INSTITUTE, BRIEFING PAPER #364 (Oct. 31, 2013) at 29, available at <http://s4.epi.org/files/2013/EPI-Legislative-Attack-on-American-Wages-Labor-Standards-10-31-2013.pdf> (“When the federal minimum-wage law was first established in 1941, there was one federal workplace inspector for every 11,000 workers. By 2008, the number of laws that inspectors are responsible for enforcing had grown dramatically, but the number of inspectors per worker was less than one-tenth what it had been in 1941, with 141,000 workers for every federal enforcement agent. With the current staff of federal workplace investigators, the average employer has just a 0.001 percent chance of being investigated in a given year. That is, an employer would have to operate for 1,000 years to have even a 1 percent chance of being audited by Department of Labor inspectors.”).
8. *Good Steps Against Unpaid Internships*, Editorial Board, N.Y. TIMES (Mar. 9, 2014) at A20, <http://www.nytimes.com/2014/03/10/opinion/good-steps-against-unpaid-internships.html> (“Those credits did not count toward a degree, and mostly functioned as a fig leaf for employers, who could pretend that the credit somehow justified not paying for a student’s work.”).
9. Perlin, *supra* note 4, at 23 (“[T]he very significance of the word *intern* lies in its ambiguity.”).
10. *E.g.*, productions participating in the Made in NY “Mark of Distinction” program in the Mayor’s Office of Film, Theatre & Broadcasting; the classified ad jobs board run by the New York Foundation of the Arts, which receives funds from the City’s Department of Cultural Affairs; for-profit organizations using unpaid volunteers for events in City parks, such as the GoogaMooga food event in Prospect Park.
11. Unpaid interns should be included in any living wage executive orders. See Jill Colvin, *De Blasio Moves to Expand Living Wage With Executive Order*, N.Y. OBSERVER (Feb. 10, 2014) <http://observer.com/2014/02/de-blasio-moves-to-expand-living-wage-with-executive-order>.
12. See *Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act*, U.S. DEP’T OF LABOR, WAGE AND HOUR DIV. (Apr. 2010) available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>.
13. See *Wage Requirements for Interns in For-Profit Businesses*, N.Y. STATE DEP’T OF LABOR, available at <http://www.labor.ny.gov/formsdocs/factsheets/pdfs/p725.pdf> (last visited Apr. 1, 2014).
14. *E.g.*, establishing a hotline and web service to report working conditions or advertisements for positions that appear out of compliance with the law; conducting an awareness campaign among employers, employees, students and universities; creating a reporting requirement of intern-engaging employers so the City can begin collecting much-needed data.