



WHEN MEDIATION MAKES SENSE: A WIN FOR EMPLOYERS AND EMPLOYEES

By Lorraine M. Brennan, Esq.

A recent article in the *New York Times* discussed a new law giving unpaid interns in New York the right to sue if they are harassed or discriminated against by an employer. The legislation takes effect in June, a time of year when interns flood New York City seeking opportunities for experience and hopefully paid employment down the road. The article was of particular interest to me, as I had just successfully mediated a matter where discrimination claims against a well-known clothing designer had been brought by 16 former employees. While the employees were not interns, they had brought unpaid wage and racial discrimination claims against their former employer.

What became clear as the mediation progressed was that the plaintiffs did not realize that their claim, if it survived a motion to dismiss, would statistically be unlikely to ever see the inside of a courtroom. They also didn't realize that the courts can move very slowly and that they might be looking at a process of two years or more, which would be not only disruptive to their lives, but also detrimental to their finances. If they lost the racial discrimination claims, which was the thrust of their case, they stood to recover almost nothing except lost wages, a claim the defendant clothing manufacturer had already agreed to pay once it was provided with proper records. At the request of their lawyer, I informed the plaintiffs of these issues.

The most critical issue in the case, however, was that the plaintiffs felt disrespected by the employer. This is exactly the kind of conflict where mediation is most effective. During the process, several of the former employees had their say in open session, in front of the employer's representatives, and that tactic went a long way in helping them to accept what was a very fair settlement and move on with their lives.

The case settled in one day, and the plaintiffs and defendant were both satisfied with the result. There was no long, drawn-out discovery battle, no depositions, no pre-trial conference, or years of waiting for a trial that would probably never happen.

I believe the new law providing protections for interns should encourage potential employers to think about mediating these types

of disputes, especially since many of these interns are hired only for summer positions and then go back to school. The mediation process would help these claims to be managed in a fair and efficient manner, and it would benefit both employer and intern. The interns would avoid having to wait years for an outcome, numerous trips to New York (especially difficult on a student budget if they go to school elsewhere) and depositions and other pre-trial discovery that would be onerous and expensive (especially if it is unclear who would be paying the legal fees). The interns would also get to tell their story, which is many times the deciding factor in the success of a mediation. They would indeed be part of the process, with the mediator as the guide, and feel some ownership in the outcome.

The employer would benefit from a cost standpoint, a confidentiality standpoint (social networking has made the spread of bad publicity about companies who are sued for sexual harassment or racial discrimination ubiquitous) and relief from business disruption that takes place when one needs to prepare a case for trial and presumably conduct depositions and other discovery. It is a win for interns and a win for employers. And to quell any "David versus Goliath" fears, interns would also have the right to refuse to settle in mediation if they are not satisfied with the outcome.

Mediation can be of significant help in these types of cases. Hopefully, companies will think about mediating and continue their internship programs, which have provided so many young people with truly invaluable experience. ■

Lorraine M. Brennan is a full-time arbitrator and mediator at JAMS, specializing in international dispute resolution, employment, complex commercial and intellectual property, among other specialties. Based in New York, Ms. Brennan was the Managing Director of JAMS International for three years and worked at the ICC International Court of Arbitration as well as the CPR Institute in New York City. She is a litigator by training and clerked in the SDNY. She has been an adjunct at Cornell Law School, Georgetown Law Center and Shantou University Law School in Guangdong, China. The views expressed in this piece are her own and are not necessarily those of JAMS.

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