

New York City Enacts Legislation Prohibiting Discrimination against the Unemployed

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New York City is joining other jurisdictions, such as New Jersey, Oregon and the District of Columbia, with a law prohibiting discrimination against the unemployed. The New York City Council, on March 13, 2013, by a vote of 44 to 4 overrode Mayor Michael Bloomberg's veto of legislation amending the New York City Administrative Code to prohibit New York City employers from basing employment decisions on a job applicant's unemployed status. The law is set to take effect on June 11, 2013, 90 days after its enactment.

In vetoing the bill back in February, Mayor Bloomberg called the legislation "misguided." He also said, "I can't think of any rational employer who wouldn't want to know what [an applicant] has been doing for a period of time."

The new legislation (814-A) applies to employers with at least four employees and protects the "unemployed." "Unemployed" is defined as individuals "not having a job, being available for work, and seeking employment." The legislation bars employers from basing employment decisions related to "hiring, compensation or terms, conditions or privileges of employment of an applicant's unemployment."

Additionally, all employers, irrespective of size, generally are prohibited from publishing, in print or any other medium, any advertisement for a vacant position that contains any indication that being currently employed is a qualification or that the employer will not consider unemployed individuals. Nonetheless, employers may inquire into the circumstances of an applicant's separation from prior employment or consider an applicant's unemployed status where there is a "substantially job-related reason for doing so."

Further, employers may limit consideration for job vacancies to current employees of the employer or give priority to individuals with respect to hiring and compensation or terms, conditions or privileges of employment based on an individual's level of experience.

An individual who believes he or she has been discriminated against in violation of the law has the right to file a private action in court for damages, injunctive relief and other appropriate remedies or make a complaint to the New York City Commission on Human Rights.

The Commission, if it finds prohibited discrimination, then may issue a "cease and desist" order to the employer and could require the employer to hire the prospective employee, to provide back pay and front pay, or to pay compensatory damages, among other things. Moreover, failure to comply with an order from the Commission could result in a civil penalty of up to \$50,000 and additional civil penalties of up to \$100 per day. If the Commission finds that an employer engaged in an unlawful discriminatory practice, it can impose civil penalties of up to \$125,000 or \$250,000 (if the employer actions were found to be "willful, wanton or malicious").

Finally, any person who violates a Commission order can be found guilty of a misdemeanor punishable by up to one year in prison or by fine of up to \$10,000, or both.

All employers with operations in New York City should scrutinize any job advertisements carefully and train interviewers to avoid any statements that could lead to liability. For example, consider eliminating any statement that the company's goal is to hire only employees currently employed by other entities.

If you have any questions about this or other workplace developments, please contact Richard I. Greenberg, at (212) 545-4000 or GreenbeR@jacksonlewis.com, Daniel J. Jacobs, at (212) 545-4000 or JacobsD@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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