

## MEMO

To: Lucia Nunez, Marcus Miles & Kathy Cramer Walsh

From: Eric Kestin

Re: Unemployment as a protected class

Date: March 4, 2013

### **Overview:**

Unemployment as a protected class has been considered in a variety of jurisdictions including the federal government, 17 state governments during 2012, Washington DC and New York City.

At this time it is a protected class in New Jersey (as of 2011), Oregon (March 2012) and Washington DC (as of May 2012).

The California Legislature enacted a bill in September 2012 but it was vetoed by the Governor.

There is an article titled, "The Long-term Unemployed: A New Protected Class of Employee?" by Thomas A. Hemphill, Waheeda Lillevik and Francine Cullari. Published in Business and Society Review Winter 2012 which I cannot access:  
<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8594.2012.00417.x/full>

### **New Jersey**

New Jersey law prohibits employers from indicating a preference that a person be employed in a job vacancy. If this law is violated there is a civil penalty against the company that places such a vacancy. There does not seem to be any way for an individual to file a complaint.

### **Oregon**

The Oregon law seems to be very similar to the New Jersey law.

Here is a quote from a law firm which provided analysis of the new law for its clients: "Fortunately, the new law is rather limited in scope. It simply prohibits employers from publishing job advertisements that include language indicating that unemployed individuals should not apply for the job or that they will not be considered for the position. An employer whose job advertisements feature language such as "unemployed applicants not considered" or "all applicants must currently be employed" would violate the law. But the new law does NOT bar employers from considering an applicant's employment status during the course of the hiring process. The limited available remedies also weaken the effect of the law. Disgruntled applicants may not sue you directly. Instead, only the Commissioner of the Bureau of Labor and Industries

(BOLI) can pursue a violation. The law also caps any penalties the BOLI commissioner may assess at \$1,000 per violation, with such penalties going to the government rather than individual applicant.” Source: <http://www.laborlawyers.com/15041>

### **District of Columbia**

Has a protection for those that have a “status as unemployed.” This law indicates that employers may not consider a person’s “employment status” when making a hiring decision. This is the first law in the nation with this protection.

Summary of the law: The District of Columbia City Council and Mayor Vincent Gray have enacted a first-of-its-kind law protecting jobless individuals from discrimination in the hiring process. The new law prohibits employers and employment agencies from discriminating against potential employees based on their status as unemployed, and it is the first in the United States to both prohibit employers from considering the employment status of potential employees and provide whistleblower protections for current employees who report employer violations. Although the law does not give aggrieved individuals a private right of action to enforce the law, civil penalties are available and may be assessed against noncompliant employers by the D.C. Office of Human Rights. Source: <http://www.littler.com/publication-press/publication/district-columbia-first-nation-ban-discrimination-based-unemployment-s>

### **New York City**

New York City has passed a bill but Mayor Bloomberg has indicated he will veto it.

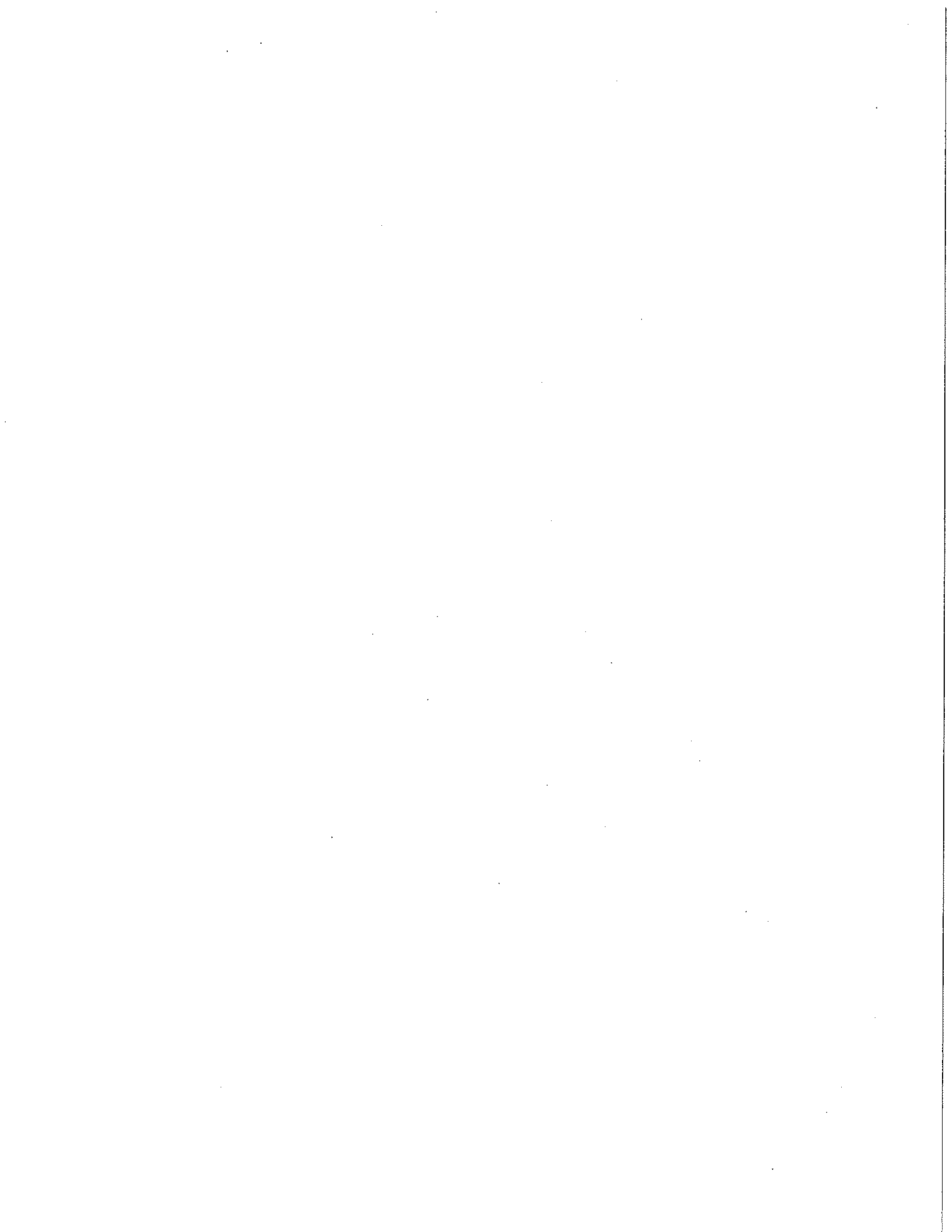
Here is a summary of the bill: On January 23, 2013, New York’s City Council passed a bill that would modify the New York City Human Rights Law and prohibit discrimination based on unemployment status. The bill would also prohibit advertising requiring current employment as a condition of employment. However, the bill contains several notable exceptions, including that employers may (1) consider an applicant’s unemployment if a substantially job-related reason exists for doing so, and (2) ask applicants about the circumstances related to “separation from prior employment.” If enacted, Bill 814-A would create a private cause of action, as well as grant the New York City Human Rights Commission the authority to enforce the law. Mayor Michael Bloomberg has expressed his intention to veto the bill. Source:

<http://www.ogletreedeakins.com/publications/2013-02-28/new-york-city-council-passes-bill-prohibiting-%E2%80%9Cunemployment%E2%80%9D-discrimination->

### **Attachments**

1. New Jersey law
2. Oregon law
3. District of Columbia law
4. Article: “Law Prohibiting Discrimination Based on Unemployment Status Signed by DC Mayor: Employers Beware – Similar Laws Likely to Follow” from a law firm providing analysis of the District of Columbia protected class

5. Article: "No unemployed need apply: Some complain they need a job to find a job; states take action." February 2013
6. Article: "Trending: The Unemployed as a Protected Class." February 20, 2013
7. "Discrimination Against the Unemployed" October 15, 2012 – document from the National Conference of State Legislatures which has information regarding all 2012 Legislation which was proposed. Source: <http://www.ncsl.org/issues-research/labor/discrimination-against-the-unemployed.aspx>



# New Jersey

## New Jersey Statutes, Title: 34, LABOR AND WORKMEN'S COMPENSATION

### Chapter 8B: Provisions prohibited in advertisements for job vacancies.

#### Section: 34:8B-1: Provisions prohibited in advertisements for job vacancies.

1. Unless otherwise permitted by the provisions of Title 11A of the New Jersey Statutes or any other law, rule or regulation, no employer or employer's agent, representative, or designee shall knowingly or purposefully publish, in print or on the Internet, an advertisement for any job vacancy in this State that contains one or more of the following:

- a. Any provision stating that the qualifications for a job include current employment;
- b. Any provision stating that the employer or employer's agent, representative, or designee will not consider or review an application for employment submitted by any job applicant currently unemployed; or
- c. Any provision stating that the employer or employer's agent, representative, or designee will only consider or review applications for employment submitted by job applicants who are currently employed.

Nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy in this State that contains any provision setting forth any other qualifications for a job, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

In addition, nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered.

L.2011, c.40, s.1.

#### Section: 34:8B-2: Violations, penalties.

2. a. Any employer who violates this act shall be subject to a civil penalty in an amount not to exceed \$1,000 for the first violation, \$5,000 for the second violation and \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

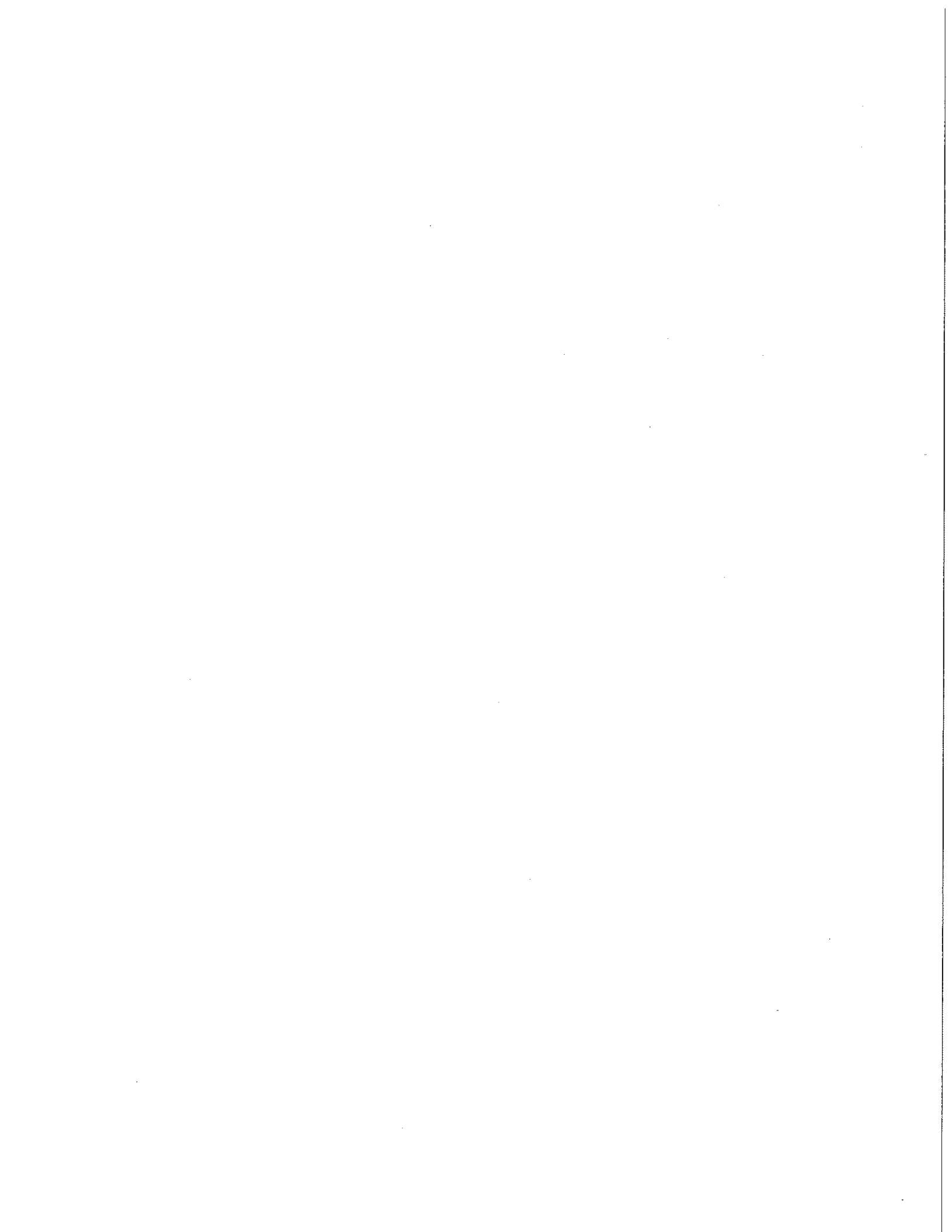
b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this act.

L.2011, c.40, s.2.

This section added to the Rutgers Database: 2012-09-26 13:37:50.

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Oregon

76th OREGON LEGISLATIVE ASSEMBLY--2012 Regular Session

Enrolled

Senate Bill 1548

Sponsored by Senators ROSENBAUM, BOQUIST, COURTNEY, Representative J SMITH; Senators DINGFELDER, EDWARDS, MONNES ANDERSON, STEINER HAYWARD, WINTERS, Representatives BARKER, BARNHART, BERGER, BEYER, BOONE, BREWER, BUCKLEY, CLEM, CONGER, DEMBROW, DOHERTY, FREDERICK, GARRETT, GELSER, GREENLICK, HARKER, HOLVEY, HOYLE, HUNT, KENNEMER, KENY-GUYER, KOMP, KOTEK, MATTHEWS, NATHANSON, NOLAN, ROBLAN, SCHAUFLEER, TOMEI, WAND, WEIDNER, WITT (Presession filed.)

CHAPTER .....

AN ACT

Relating to advertisements for job vacancies; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + Section 2 of this 2012 Act is added to and made a part of ORS chapter 659A. + }

SECTION 2. { + (1) Except as permitted under ORS chapter 240 or any other provision of law, an employer, the employer's agent, representative or designee or an employment agency may not knowingly or purposefully publish in print or on the Internet an advertisement for a job vacancy in this state that provides that:

(a) The qualifications for a job include current employment;

(b) The employer, the employer's agent, representative or designee or the employment agency will not consider or review an application for employment submitted by a job applicant who is currently unemployed; or

(c) The employer, the employer's agent, representative or designee or the employment agency will only consider or review applications for employment submitted by job applicants who are currently employed.

(2) Violation of this section is an unlawful practice.

(3) Nothing in this section shall be construed to:

(a) Prohibit an employer, the employer's agent, representative or designee or an employment agency from publishing in print or on the Internet an advertisement for a job vacancy in this state that contains a provision:

(A) Setting forth qualifications for a job vacancy, including but not limited to:

(i) Holding a current and valid professional or occupational license, certificate, registration, permit or other credential; or

(ii) A minimum level of education or training, or professional, occupational or field experience; or

(B) Stating that only applicants who are current employees of the employer will be considered for the position.

Enrolled Senate Bill 1548 (SB 1548-INTRO)

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(b) Create or authorize a private cause of action by an aggrieved person against an employer, the employer's agent, representative or designee or an employment agency that is alleged to violate or has violated this section.

(4) An employer or employment agency that is found to have violated subsection (1) of this section by the Commissioner of the Bureau of Labor and Industries shall be assessed a civil penalty as provided under ORS 659A.855. + }

SECTION 3. { + This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage. + }

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Passed by Senate February 15, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 27, 2012

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Bruce Hanna, Speaker of House

.....  
Arnie Roblan, Speaker of House



Enrolled Senate Bill 1548 (SB 1548-INTRO)

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Received by Governor:

.....M.,....., 2012

Approved:

.....M.,....., 2012

.....  
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2012

.....  
Kate Brown, Secretary of State

Enrolled Senate Bill 1548 (SB 1548-INTRO)

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Washington D.C.

ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2012 Summer  
Supp.

West Group  
Publisher

To prohibit discrimination in employment on the basis of an individual's status as unemployed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Unemployed Anti-Discrimination Act of 2012".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Employee" means any individual employed by an employer.
- (2) "Employer" means any person who employs or seeks to employ for compensation one or more individuals for a position in the District (but not including the person's parent, spouse, child, or domestic servant engaged in work in and about the employer's household). The term "employer" includes any person acting in the interest of the person, directly or indirectly.
- (3) "Employment agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of that person.
- (4) "Potential employee" means any individual who has applied to an employer for a vacant position to gain employment.
- (5) "Status as unemployed" means any individual who, at the time of applying for employment, or, who at the time an act alleged to violate this act occurs, does not have a job, is available for work, and is seeking employment.

Sec. 3. Discrimination based on status as unemployed unlawful.

No employer or employment agency shall:

- (1) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
- (2) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
  - (A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

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(B) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**Sec. 4. Retaliation unlawful.**

No employer or employment agency shall:

- (1) Interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right provided under this act; or
- (2) Fail or refuse to hire, or discharge, any employee or potential employee because the employee or potential employee:
  - (A) Opposed any practice made unlawful by this act;
  - (B) Has filed any charge, or has instituted or caused to be instituted any proceeding, relating to any right provided under this act;
  - (C) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this act; or
  - (D) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this act.

**Sec. 5. Exemptions.**

(a) Nothing set forth in this act shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision setting forth any other qualifications for a job, as permitted by law, including:

- (1) The holding of a current and valid professional or occupational license;
- (2) A certificate, registration, permit, or other credential; or
- (3) A minimum level of education, training, or professional, occupational, or field experience.

(b) Nothing in this act is intended to preclude an employer or employment agency from examining the reasons underlying an individual's status as unemployed in assessing an individual's ability to perform a job or in otherwise making employment decisions about that individual.

(c) Nothing in this act shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by the employer will be considered for employment.

**Sec. 6. Oversight.**

(a) The District of Columbia Office of Human Rights ("Office") shall receive, review, and investigate complaints regarding violations of this act and shall take appropriate enforcement action regarding the complaints.

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(b) The Office shall respond to a complaint arising pursuant to this act no later than one month after the complaint is filed.

(c) The Office shall assess civil penalties in all cases where the Office determines that an employer or employment agency has committed a violation of this act.

**Sec. 7. Civil penalties.**

(a) An employer or employment agency that the Office finds to have violated this act shall be subject to a civil penalty for a first violation of \$1,000 per claimant, \$ 5,000 per claimant for a second violation, and \$10,000 per claimant for each subsequent violation, but not to exceed a total of \$20,000 per violation. The Office shall collect the penalty from the violator and distribute the funds collected among any employee or potential employee who filed a claim regarding a violation of this act.

(b) Nothing set forth in this act shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against an employer or employment agency who has violated, or is alleged to have violated, the provisions of this act.

**Sec. 8. Rules.**

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

**Sec. 9. Applicability.**

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

**Sec. 10. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 11. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

**ENROLLED ORIGINAL**

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia



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**Practices**

**Offices**

**Law Prohibiting Discrimination Based on Unemployment Status Signed by DC Mayor: Employers Beware – Similar Laws Likely to Follow**

Client Alert

March 28, 2012

On March 19, 2012, the Mayor of the District of Columbia signed the Unemployed Anti-Discrimination Act of 2012 (the "Act"), which prohibits employers and employment agencies from discriminating against job applicants based on their unemployment status. The Act is set to become the nation's first law to ban the *consideration* of an applicant's unemployment status in adverse hiring decisions. The Act will take effect following the statutorily mandated 30-day period of U.S. Congressional review, and publication in the District of Columbia Register.

Although the Act does not allow employees and applicants a private right of action, it is nevertheless significant in that it provides unemployed applicants and employee whistleblowers unprecedented protection from discrimination based on employment status. The only other similar law in effect is in New Jersey, but that law pertains to job advertisements alone, banning employers from advertising that the unemployed need not apply. Oregon's legislature passed a bill similar to New Jersey's law, but that bill has not yet been signed by Oregon's governor.

As unemployment discrimination legislation is gaining interest among legislators across the nation, we recommend that employers within *and outside* DC pay attention to the broad protections afforded under the Act, with the understanding that similar legislation may soon be enacted in your state. To assist employers in understanding the Act, this Alert discusses the scope of the Act's coverage, as well as the unlawful practices, enforcement mechanisms and remedial schemes set forth therein.

Coverage

The coverage of the Act is expansive. "Employer" is defined as any person who employs or seeks to employ for compensation one or more individuals for a position in DC (but not including the person's parent, spouse, child, or domestic servant engaged in work in and about the employer's household), as well as any person acting in the interest of the employer, directly or indirectly.

The Act also covers "employment agencies" – defined as any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer (or to procure opportunities for employees to work for an employer), as well as an agent of such person.

Under the Act an "employee" is any individual employed by an employer, and a "potential employee" includes any individual who has applied to an employer for a vacant position to obtain employment.

Finally, the Act defines "status as unemployed" to mean any individual who, at the time of applying for employment, or, who at the time an act alleged to violate the Act occurs, does not have a job, is available for work, and is seeking employment.

Discrimination Defined

Under the Act, it is an unlawful practice for an employer or employment agency:

- to fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of his unemployed status;
- to publish in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes
  - any provision stating or indicating that an individual's unemployed status disqualifies the individual for the job; or
  - any provision stating or indicating that an employer or employment agency will not consider or hire an individual for employment based on that individual's unemployed status.

Retaliation/Whistleblower Protections Defined

Under the Act, which contains broad retaliation and whistleblower protections found in other anti-discrimination laws, employers and employment agencies are prohibited from interfering with, restraining, or denying the exercise of any right specified therein. Further, the Act prohibits employers and employment agencies from failing or refusing to hire, or discharging, any employee or potential employee for:

- opposing any practice made unlawful by the Act;
- filing any charge, or instituting (or causing to be instituted) any proceeding relating to any right provided under the Act;
- giving (or about to give) any information in connection with any inquiry or proceeding relating to any right provided under the Act; or
- testifying (or about to testify) in any inquiry or proceeding relating to any right provided under the Act.

Exemptions

The Act contains three exemptions which allow employers and employment agencies to continue to engage in certain activities when filling job vacancies. Accordingly:

- Job advertisements may contain any other lawful job



qualification including:

- the holding of a current and valid professional or occupational license;
  - a certificate, registration, permit, or other credentials; or
  - a minimum level of education, training, or professional, occupational, or field experience;
- Employers and employment agencies may continue to examine the reasons underlying an individual's unemployed status in assessing an individual's ability to perform a job or in otherwise making employment decisions about that individual; and
  - Employers may limit the applicant pool to their own current employees and any advertisement can specify that only applicants who are currently employed by the employer will be considered for employment.

#### Enforcement and Remedy

The District of Columbia Office of Human Rights ("DCOHR") will be responsible for handling all complaints alleging violations of the Act. Once a complaint has been filed, the DCOHR will have one month to investigate and determine whether an employer or employment agency violated the Act and assess a penalty.

Under the Act, DCOHR can assess civil penalties of \$1,000 per claimant for a first violation, \$5,000 per claimant for a second violation, and \$10,000 per claimant for each subsequent violation (but not to exceed a total of \$20,000 per violation). DCOHR will distribute the funds among any employee or potential employee who filed a claim under the Act.

#### Takeaway

Along with New Jersey's law, the Act may be the harbinger of future legislation at the federal and state levels. In fact, there are currently four bills pending before the U.S. Congress that would prohibit employers from making most hiring decisions based on an applicant's unemployed status (which two of the federal bills define to include gaps in employment history). Unlike the Act, however, these bills would allow applicants and employees to bring a private right of action and to recover generous remedies from employers and employment agencies found to be violating the law. Furthermore, bills containing some form of ban on employment discrimination have been proposed in approximately half of state legislatures.

It is worth noting that this issue is also on the radar screen of the Equal Employment Opportunity Commission (EEOC). Last year the EEOC conducted a public hearing on the topic of unemployment discrimination, entertaining the prospect that the alleged practice

disparately impacts minority groups protected under existent federal discrimination law and the agency is purportedly investigating a number of charges involving allegations of unemployment discrimination.

Overall, the hiring process has received a tremendous increase in legislative and judicial attention in recent years both at the federal and state levels. This scrutiny includes a headwind of laws and proposed laws and potential new guidance from the EEOC that would ban or limit inquiries into an applicant's credit and criminal background history and use of social media.

Best Practices

- To avoid potential scrutiny, employers should:
  - delete all reference to current employment status in job advertisements and/or their instructions to staffing agencies, and
  - carefully review hiring procedures, including those of their regularly-used outside employment agencies/recruiters, to avoid the appearance of "screening" based on unemployment status or otherwise eliminating applicants from consideration based solely on unemployed status;
- Those interviewing prospective candidates should be reminded that they should not comment orally, or in a post-interview written review as to a candidate's unemployment status as a rationale for any recommendations;
- Employers should be cognizant of the Act and New Jersey law and the expanding patchwork of legislation and proposed legislation intended to eliminate perceived barriers to hire, but may continue to:
  - consider an unemployed candidate's work history, including reason for unemployment -- so long as information is relevant to job performance; and
  - hire candidates with the most relevant and/or most recent appropriate work experience.

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If you have any questions or concerns regarding the Act, please contact your Proskauer lawyer or any member or co-Chairs of Proskauer's Employment Law Counseling Practice Group.

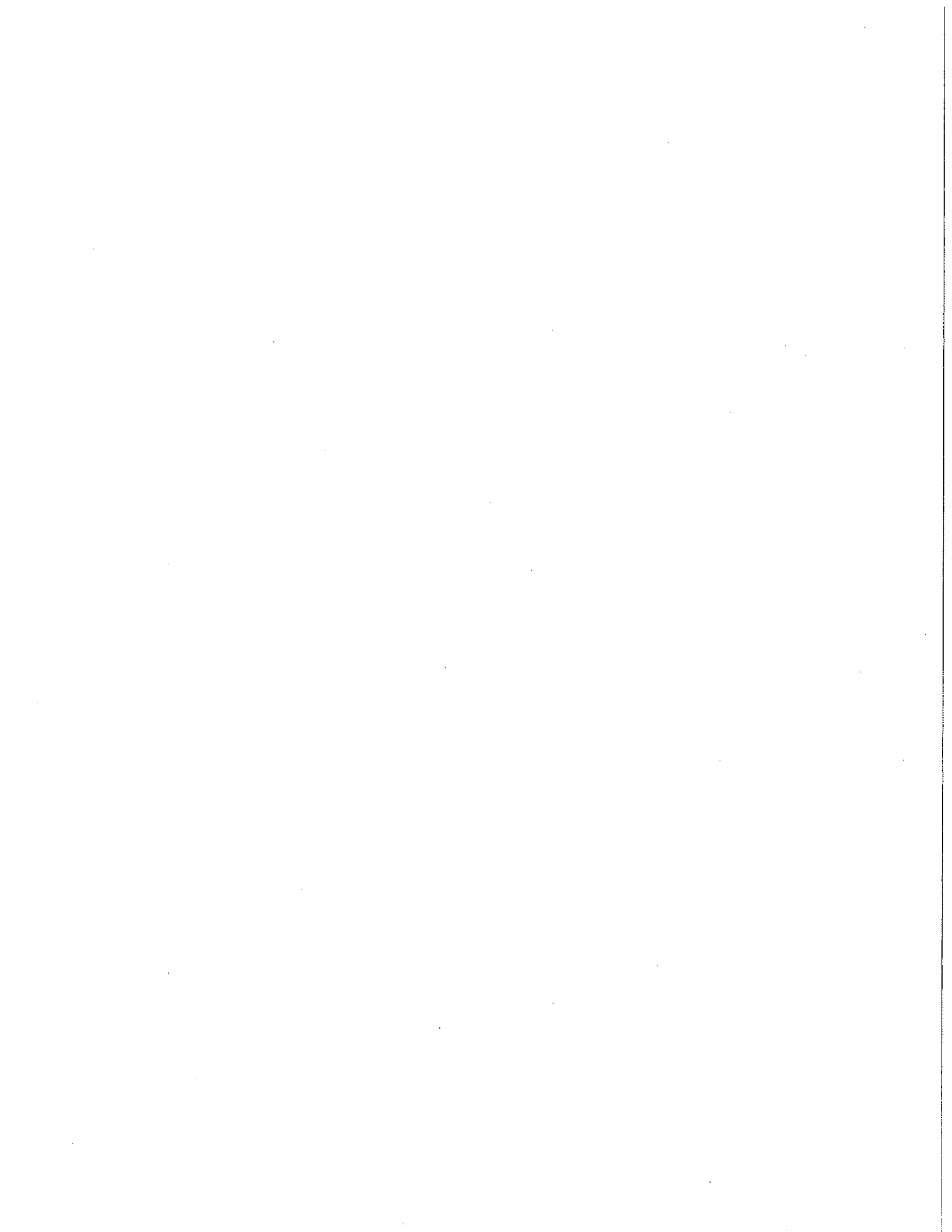
***Employment Counseling Group Co-Chairs***

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Leslie E. Silverman, Partner  
Allan H. Weitzman, Partner  
Frederic C. Leffler, Senior Counsel

Marc. A. Mandelman, Senior Counsel

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***Authors of this alert:*** Katharine H. Parker & Daniel L. Saperstein



## Unemployed Complain They Need a Job to Find a Job

By JENNIFER PELTZ  
NEW YORK

abcnews.go.com



**No unemployed need apply: Some complain they need a job to find a job; states take action**

The Associated Press

Help wanted. Qualifications: Must already have a job.

It's a frustrating catch for those out of work in an era of high unemployment: looking for a job, only to find that some employers don't want anyone who doesn't already have one.

But after four years of above-average joblessness in the U.S., efforts to bar such practices by employers have met with mixed results.

While New Jersey, Oregon and Washington, D.C., have passed laws making it illegal to discriminate against the unemployed, New York City's billionaire-businessman mayor vetoed on Friday what would have been the most aggressive such measure in the country. Similar proposals have stalled in more than a dozen other states and Congress.

Advocates for the unemployed say such hiring practices are unfair, particularly to those who have been laid off because of the economic crunch and not through any fault of their own. Businesses, though, say that the extent of such practices is exaggerated, hiring decisions are too complicated to legislate, and employers could end up defending themselves against dubious complaints.

Nationally, more than 1 in 3 unemployed workers has been looking for at least six months, according to the federal Bureau of Labor Statistics.

Janet Falk said that when she applied for a public-relations job at a New York law firm two years ago, the recruiter told her she wouldn't be considered because she had been out of work for more than three months. The recruiter was being paid to find candidates who were in jobs or just out of them.

"My personal view is that hiring is like musical chairs, and if only the people who are already on the dance floor are playing, then the long-term unemployed can't get in the game," said Falk, who was laid off four years ago. She now runs her own consulting business.

An October 2011 search of New York City-based job listings found more than a dozen that explicitly required candidates to be employed, Manhattan Borough President Scott Stringer's office said. A broader review that year by the National Employment Law Project found 150 ads that were restricted to or aimed at people currently working.

As for why, experts say employers may think that unemployed applicants' skills have atrophied, that they lost their jobs because of their own shortcomings, or that they will jump at any job offer and then leave as soon as something better comes along.

But "'don't apply, don't even try' is the opposite of American values," New York City Council Speaker Christine Quinn said when the measure passed last month. She said Friday that she expects the City Council will override Mayor Michael Bloomberg's veto within a month.

Bloomberg called the measure a well-intended but misguided effort that would create more lawsuits than jobs.

"Hiring decisions frequently involve the exercise of independent, subjective judgment about a prospective employee's likely future performance," he said in a statement.

And unlike other characteristics that employers are generally banned from considering, such as an applicant's race, religion or gender, "the circumstances surrounding a person's unemployment status may, in certain situations, be relevant to employers when selecting qualified employees," he said.

Business groups say that no-unemployed-applicants-need-apply ads represent a tiny fraction of the millions of job openings nationwide each year.

One 2011 listing that got city lawmakers' attention — it required that applicants for an opening as a New York legal secretary "must be currently employed" — was mistakenly written that way, said William Alcott, a lawyer for the firm that posted it, McGuireWoods LLP.

"It was not our policy then and isn't our policy now," he said this week.

Like other measures that have passed, the New York City one would ban help-wanted ads that say unemployed applicants won't qualify. It would also more generally prohibit employers from refusing to hire candidates because they are out of work.

But New York's measure would go further than the others by letting rejected applicants sue employers for damages.

Companies see it as government meddling and "creating another basis for unmerited lawsuits against employers," said Kathryn Wylde, president of the Partnership for New York City, an influential business group.

President Barack Obama proposed in 2011 to make it illegal to refuse to consider unemployed applicants.

New Jersey in 2011 became the first state to outlaw the practice. The state Labor Department has gotten one complaint so far and cited a company for an ad that excluded jobless applicants; the case is not yet resolved, the agency said this week.

Oregon and the District of Columbia followed suit last year, while 15 other states considered similar proposals, according to the National Conference of State Legislatures. Gov. Jerry Brown vetoed such a measure in California last fall, indicating he wasn't happy with changes made to it.

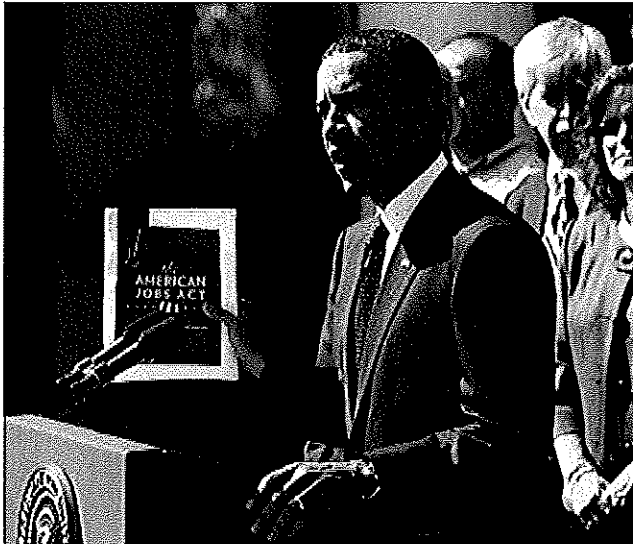
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Associated Press writer Rema Rahman contributed to this report from Trenton, N.J.

- EPLI Risk - <http://eplirisk.com> -

Trending: The Unemployed as a Protected Class

Posted By [Robert Brener](#) On February 20, 2013 @ 1:00 pm In [Hiring Process, Unemployment](#) | [No Comments](#)



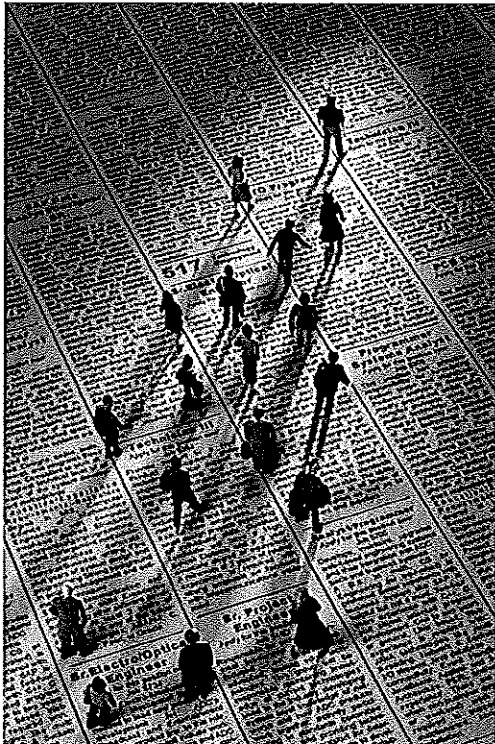
As reported at the time, President Obama's 2011 jobs bill included a proposal to prohibit discrimination on the basis of a job applicant's status as unemployed. The proposal identified discrimination toward the long term unemployed as a contributing factor to the nation's staggering unemployment statistics. In essence, the proposal would have made the unemployed a protected class in the same manner that race, religion and sex are now. Although the jobs bill has since languished, similar proposals are trending.

Whether discrimination towards the unemployed is a problem is debatable. Data suggesting the unemployed are subject to widespread and systematic discrimination is sparse. For instance, following a four week review of the job sites CareerBuilder.com, Indeed.com, Monster.com and Craigslist.com, researchers for the [National Employment Law Project](#) found only 150 ads listing employment status as a qualification <sup>[1]</sup>. Further, the reasons for the current median length of unemployment are, to say the least, complex. For instance, some argue that [the length of unemployment is due to shifts in the inherent job finding abilities of the unemployed as a group](#) <sup>[2]</sup>. Moreover, these proposals have come under fierce attacks, with one analyst for The Heritage Foundation calling the proposal in the jobs bill a "solution looking for a problem." <sup>[3]</sup>

Inauspicious policy justifications aside, proposals to protect the unemployed poll well and are seen as non-monetary job growth initiatives. As a result, similar proposals are being raised and enacted nationwide. New Jersey and Oregon have enacted statutes that prohibit employers from listing current employment as a qualification to apply. The District of Columbia went further with the enactment of The Unemployed Anti-Discrimination Act of 2012 (effective May 31, 2012), being the first jurisdiction to define the unemployed as a protected class and directing its Office of Human Rights to investigate and provide responses to claims of discrimination within one month of being notified of the alleged discriminatory act.

New York City is on the precipice of enacting a proposal that would go even further. Beyond prohibiting job postings listing employment status as a qualification, Bill 814-A, as recently passed by

the New York City Council and believed to have enough support to override an anticipated veto by Mayor Bloomberg, will provide a private right of action against employers that discriminate against an applicant on the basis of his or her present or past employment status.



#### **What does this mean?**

Employers need to be proactive. Job posting literature must be reviewed and hiring personnel must ensure their scripts stay clear of prohibited questions. That's the easy part. What is less easy, even after ensuring job postings are compliant and hiring personnel understand this emerging trend, is how to avoid an onslaught of frivolous discrimination claims from disappointed and disgruntled job seekers.

Recognizing that significant and legitimate reasons may exist for an employer to consider an applicant's work history (termination for embezzlement comes to mind), Bill 814-A provides four exceptions to the general prohibition: First, an employer may inquire where there is a "substantially job-related reason for doing so," as would be the case when a professional license is required. Second, the employer may give priority to the employer's own current employees, i.e., unemployed applicants cannot claim priority given to an employer's employees is a discriminatory practice. Third, an employer may tie compensation to prior work experience, which is logical and prevents wage differential discrimination claims on the basis of an employer merely paying experienced workers more. Fourth, and most interestingly, an employer may consider the "circumstances surrounding an application's separation from prior employment."

The last exception should give pause.

First, what if an employer does not consider the "circumstances" surrounding an applicant's termination? By failing to inquire, the employer would appear to be at disadvantage when the unsuccessful applicant brings a subsequent discrimination claim citing his or her employment status a factor in the employer's decision making.

Second, Bill 814-A offers no guidance as to what "circumstances" would permit the employer to claim safe harbor. For instance, what if an applicant was previously terminated for excessive leave,



but the applicant says during his interview that his termination was wrongful and violated his right under the FMLA? Take it a step further, what if the employee says he is suing his former employer?

The interviewing employer would then be in the unenviable position of (a) having suspicions about the applicant's prior abuse of leave, (b) weighing the applicant's asserted rights under the FMLA, and (c) trying to make a hiring decision without getting sued. Employers will need to make careful assessments about what "circumstances" are sufficient to claim safe harbor. Soon these assessments will present ongoing difficulties for employers in New York City, and in a number of other jurisdictions around the country as well, until the courts and regulators offer meaningful guidance on the issue. Until then and for the foreseeable future, employers will need to work with counsel to develop best practices on a potentially case by case basis to ensure protection against future discrimination claims.

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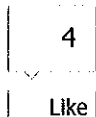
*Robert Hellner*<sup>[4]</sup> co-authored this post.

<sup>1</sup> National Employment Law Project, "Hiring Discrimination Against the Unemployed: Federal Law Outlaws Excluding the Unemployed from Job Opportunities, as Discriminatory Ads Persist," Briefing Paper, July 12, 2011.

<sup>2</sup> Andreas Hornstein, Thomas Lubik, and Jessie Romero, "Potential Causes and Implications of the Rise in Long-Term Unemployment," Federal Reserve Bank of Richmond, Economic Brief No. EB11-09, September 2011.

<sup>3</sup> James Sherk and Andrew M. Grossman, "Unintended Consequences: Allowing the Unemployed to Sue Would Destroy Jobs," November 16, 2011.

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[1] National Employment Law Project found only 150 ads listing employment status as a qualification: <http://www.nelp.org/page/-/UI/2011/unemployed.discrimination.7.12.2011.pdf?nocdn=1>

[2] the length of unemployment is due to shifts in the inherent job finding abilities of the unemployed as a group: [http://www.richmondfed.org/publications/research/economic\\_brief/2011/pdf/eb\\_11-09.pdf](http://www.richmondfed.org/publications/research/economic_brief/2011/pdf/eb_11-09.pdf)

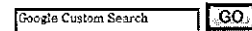
[3] "solution looking for a problem.": [http://www.heritage.org/research/reports/2011/11/unintended-consequences-allowing-the-unemployed-to-sue-would-destroy-jobs#\\_ftn12](http://www.heritage.org/research/reports/2011/11/unintended-consequences-allowing-the-unemployed-to-sue-would-destroy-jobs#_ftn12)

[4] Robert Hellner: <http://www.leclairryan.com/robert-w-hellner/>

[5] : <http://twitter.com/share>

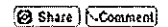
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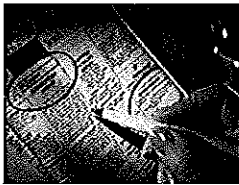


Issues & Research » Employment & Working Families » Discrimination Against the Unemployed

Go 23564



## Discrimination Against the Unemployed



Oct. 15, 2012

Those who have been unemployed for a lengthy period may be at a disadvantage in the job market, making it even more difficult for them to find work. According to media reports, many help-wanted ads indicate the employer will only accept applications from the currently employed or recently unemployed. A number of states addressed the issue during the 2011 and 2012 legislative sessions.

New Jersey became the first state to pass a law prohibiting discrimination against the unemployed, during their 2011 session. Oregon passed a law in March 2012 and the District of Columbia passed a law in May 2012. The California Legislature enacted a bill in September 2012 but it was vetoed by the Governor.

[2012 Legislation](#)

[2011 Legislation](#)

[Additional Resources](#)

### 2012 Legislation

Seventeen states and the District of Columbia considered bills during the 2012 legislative session that would prohibit discrimination against the unemployed in either hiring or advertising job openings. Oregon passed a law in March and the District of Columbia passed a law in May 2012. While the California passed a bill in September 2012, the act was vetoed by the Governor.

#### Arizona

AZ H 2660 Employment Discrimination

2012 Status: Failed - Adjourned

Author: Gallego (D)

Summary: Relates to employment discrimination; relates to long-term unemployed.

01/25/2012 - To House Committee on Government.

01/25/2012 - Additionally referred to House Committee on Employment and Regulatory Affairs.

01/25/2012 - Additionally referred to House Committee on Rules.

#### California

CA A 1450 Employment: Discrimination: Status as Unemployed

2012 Status: Vetoed.

Date of Last Action: 08/22/2012

Author: Allen (D)

Summary: Makes it unlawful for an employer, an employment agency, or a person who operates an Internet website posting jobs in the state to publish an advertisement or announcement for any job that includes provisions pertaining to an individual's current employment or employment status, subject to civil penalties. Provides that the failure to comply may be grounds for canceling, terminating, or suspending a contract, and debarring the contractor from future state agency contracts for a specified period.

01/05/2012 - Introduced.

01/26/2012 - To Assembly Committees on Labor and Employment and Judiciary.

03/14/2012 - From Assembly Committee on Labor and Employment with author's amendments.

03/14/2012 - In Assembly. Read second time and amended. Re-referred to Committee on Labor and Employment.

03/28/2012 - From Assembly Committee on Labor and Employment: Do pass to Committee on Judiciary.

04/17/2012 - From Assembly Committee on Judiciary: Do pass as amended to Committee on Appropriations.

04/25/2012 - In Assembly. Read second time and amended. Re-referred to Committee on Appropriations.

05/09/2012 - In Assembly Committee on Appropriations: To Suspense File.

05/25/2012 - From Assembly Committee on Appropriations: Do pass.

05/25/2012 - In Assembly. Read second time. To third reading.

05/30/2012 - In Assembly. Read third time. Passed Assembly. To Senate.

06/14/2012 - To Senate Committees on Labor and Industrial Relations and Judiciary.

06/27/2012 - From Senate Committee on Labor and Industrial Relations: Do pass to Committee on Judiciary.

07/03/2012 - From Senate Committee on Judiciary: Do pass to Committee on Appropriations.

08/06/2012 - In Senate Committee on Appropriations: To Suspense File.

08/16/2012 - From Senate Committee on Appropriations: Do pass as amended.

08/22/2012 - In Senate. Read second time and amended. To third reading.

08/29/2012 - In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 31 pursuant to Assembly Rule 77.

08/29/2012 - Read third time. Passed. Ordered to the Assembly.

08/30/2012 - Assembly Rule 77 suspended. Senate amendments concurred in. To Engrossing and Enrolling.

09/13/2012 - Enrolled and presented to the Governor.

09/30/2012 - Vetoed by Governor.

#### Colorado

## CO H 1134 Job Discrimination Against Unemployed

2012 Status: Failed - Adjourned

Author: Pabon (D)

Summary: Prohibits advertising a job vacancy that requires an applicant to be currently employed.  
02/21/2012 - From House Committee on Economic and Business Development: Postponed indefinitely.

**Connecticut**

## CT H 5199 Discriminatory Hiring Practices

2012 Status: Failed - Dled

Date of Last Action: 02/16/2012

Author: Joint Labor and Public Employees

Summary: Prevents discrimination of unemployed individuals in employment advertisements and in hiring for employment positions.  
02/16/2012 - Introduced.

02/17/2012 - To Joint Committee on Labor and Public Employees.

02/24/2012 - Public Hearing Scheduled 02/28.

03/20/2012 - Failed Joint Favorable deadline.

## CT S 79 Discriminatory Hiring Practices

2012 Status: Failed

Author: Joint Committee on Commerce

Summary: Prevents discrimination of unemployed individuals in employment advertisements and in hiring for employment positions.

05/02/2012 - House Calendar No. 486.

**District of Columbia**

## DC B 486 Unemployed Anti Discrimination Amendment

2012 Status: Enacted - Assigned Law Number 132

**Date of Last Action: 05/31/2012 - Enacted**

Author: Brown K (D)

Summary: (Permanent Law) Relates to the Unemployed Anti-Discrimination Amendment Act of 2011, prohibits discrimination in employment on the basis of an individual's status or history of unemployment.

09/20/2011 - Introduced.

09/20/2011 - To Council Committee on Aging and Community Affairs.

02/07/2012 - On Council floor. Read first time.

03/06/2012 - Passed Council.

03/06/2012 - Eligible for Mayor.

03/09/2012 - To Mayor.

03/19/2012 - Signed by Mayor.

03/19/2012 - Assigned Act Number 329

03/28/2012 - To Congress.

03/28/2012 - Projected Law Date: 05/09/2012

05/31/2012 - In Congress. Passed Congressional Review Period.

05/31/2012 - Assigned Law Number 132

## DC B 486 Unemployed Anti Discrimination Amendment

2011 Status: Pending - Aging and Community Affairs Committee

Date of Last Action: 09/20/2011

Author: Brown K (D)

Summary: (Permanent Law) Prohibits discrimination in employment on the basis of an individual's status or history of unemployment.

09/20/2011 - Introduced.

09/20/2011 - To Council Committee on Aging and Community Affairs.

**Florida**

## FL S 518 Fair Employment Opportunity Act

2011 Status: Pending - Senate Commerce &amp; Tourism Committee

Date of Last Action: 10/12/2011

Author: Rich (D)

Summary: Creates the "Fair Employment Opportunity Act." Prohibits an employer from refusing to consider for employment, or refusing to offer employment to, a person because the person is or was unemployed, prohibits an employer from publishing in print, on the Internet, or in any other medium an advertisement or announcement for a job which states or indicates that an unemployed person is disqualified from consideration for the job.

10/12/2011 - Prefiled.

11/02/2011 - To Senate Committee on Commerce and Tourism.

11/02/2011 - Referred to Senate Committee on Judiciary.

11/02/2011 - Referred to Senate Committee on Budget.

## FL S 518 Fair Employment Opportunity Act

2012 Status: Failed - Died

Date of Last Action: 01/10/2012

Author: Rich (D)

Summary: Creates the "Fair Employment Opportunity Act." Prohibits an employer from refusing to consider for employment, or refusing to offer employment to, a person because the person is or was unemployed, prohibits an employer from publishing in print, on the Internet, or in any other medium an advertisement or announcement for a job which states or indicates that an unemployed person is disqualified from consideration for the job.

10/12/2011 - Prefiled.

11/02/2011 - To Senate Committee on Commerce and Tourism.

11/02/2011 - Referred to Senate Committee on Judiciary.  
 11/02/2011 - Referred to Senate Committee on Budget.  
 01/10/2012 - Introduced.  
 01/10/2012 - To Senate Committee on Commerce and Tourism.  
 01/10/2012 - Referred to Senate Committee on Judiciary.  
 01/10/2012 - Referred to Senate Committee on Budget.  
 03/09/2012 - In Senate. Died in committee.

#### FL H 815 Fair Employment Opportunity Act

2012 Status: Failed - Died

Date of Last Action: 01/10/2012

Author: Reed (D)

Summary: Creates "Fair Employment Opportunity Act." Prohibits an employer from refusing to consider or offer employment because a person is or was unemployed, prohibits advertisement or announcement which states or indicates that unemployed person is disqualified and prohibits employer from directing or requesting an employment agency to take person's status as unemployed into account.

11/30/2011 - Prefiled.  
 12/12/2011 - To House Committee on Business and Consumer Affairs Subcommittee.  
 12/12/2011 - Referred to House Committee on Civil Justice Subcommittee.  
 12/12/2011 - Referred to House Committee on Economic Affairs.  
 01/10/2012 - Introduced.  
 01/10/2012 - To House Committee on Business and Consumer Affairs Subcommittee.  
 01/10/2012 - Referred to House Committee on Civil Justice Subcommittee.  
 01/10/2012 - Referred to House Committee on Economic Affairs.  
 03/09/2012 - In House. Died in committee.

#### Indiana

##### IN S 205 Employment Status of Employment Applicants

2012 Status: Failed - Adjourned

Author: Breaux (D)

Summary: Prohibits an employer from publishing an advertisement for an employment vacancy that states that qualification for the employment position includes current employment by the applicant. Civil penalty enforcement by the Department of Labor. Provides that an employer may not discriminate against an applicant or a prospective applicant for employment.

01/04/2012 - Introduced.  
 01/04/2012 - To Senate Committee on Pensions and Labor.

#### Iowa

##### IA S 2028 Employment Discrimination

2012 Status: Failed - Adjourned

Author: Quirnbach (D)

Summary: Prohibits employment discrimination based on an individual's status as unemployed. Defines status as unemployed as an individual who, at the time of application for employment or at the time of an alleged violation, does not have a job, is available for work, and is searching for work. Provides that the Iowa civil rights commission is charged with administration of the bill via existing procedures for employment discrimination complaints.

02/23/2012 - In Senate. Becomes Senate File 2259.

##### IA H 2140 Employment Discrimination

2012 Status: Failed - Adjourned - House Labor Committee

Date of Last Action: 01/27/2012

Author: Gaskill (D)

Summary: Prohibits employment discrimination based on an individual's status as unemployed, defines status as unemployed as an individual who, at the time of application for employment or at the time of an alleged violation, does not have a job, is available for work, and is searching for work, provides that the Iowa civil rights commission is charged with administration of the bill via existing procedures for employment discrimination complaints.

01/27/2012 - Introduced.  
 01/27/2012 - To House Committee on Labor.

##### IA S 2028 Employment Discrimination

2012 Status: Failed - Adjourned

Author: Quirnbach (D)

Summary: Prohibits employment discrimination based on an individual's status as unemployed; defines status as unemployed as an individual who, at the time of application for employment or at the time of an alleged violation, does not have a job, is available for work, and is searching for work; provides that the Iowa civil rights commission is charged with administration of the bill via existing procedures for employment discrimination complaints.

02/23/2012 - In Senate. Becomes Senate File 2259.

##### IA S 2259 Employment Discrimination

2012 Status: Failed - Adjourned - Senate Judiciary Committee

Date of Last Action: 02/23/2012

Author: Judiciary Cmt

Summary: Prohibits employment discrimination based on an individual's status as unemployed, defines status as unemployed as an individual who, at the time of application for employment or at the time of an alleged violation, does not have a job, is available for work, and is searching for work, prohibits an employer from engaging in certain employment practices.

02/23/2012 - Introduced.  
 02/23/2012 - In Senate. Formerly Senate File 2028.  
 03/19/2012 - To Senate Committee on Judiciary.

#### Maryland

**MD S 966 Discrimination in Employment**

2012 Status: Failed - Adjourned - Senate Judicial Proceedings Committee

Date of Last Action: 02/15/2012

Author: Gladden (D)

Summary: Prohibits discrimination in employment based on employment status, including discrimination by employers, employment agencies, labor organizations, and training programs; defines "employment status."

02/15/2012 - Introduced.

02/15/2012 - To Senate Committee on Rules.

02/27/2012 - Reassigned to Senate Committee on Judicial Proceedings.

**Michigan****MI H 4675 Unemployed Individuals**

2012 Status: Pending - Carryover - House Commerce Committee

Date of Last Action: 05/24/2011

Author: Ananich (D)

Summary: Provides for sanctions for advertisements that discriminate in hiring unemployed individuals.

05/24/2011 - Introduced.

05/24/2011 - To House Committee on Commerce.

**Minnesota****MN S 1919 Employment**

2012 Status: Failed - Adjourned - Senate Judiciary and Public Safety Committee

Date of Last Action: 02/16/2012

Author: Dibble (DFL)

Summary: Prohibits discrimination against unemployed individuals, provides for civil penalties.

02/16/2012 - Introduced.

02/16/2012 - To Senate Committee on Judiciary and Public Safety.

**New York****NY S 5151 Discrimination Against Unemployed Job Applicants**

2012 Status: Pending - Senate Labor Committee

Date of Last Action: 05/03/2011

Author: Krueger (D)

Summary: Prohibits discrimination against unemployed job applicants.

05/03/2011 - Introduced.

05/03/2011 - To Senate Committee on Labor.

**NY S 5316 Hiring Discrimination By Employers**

2012 Status: Pending - Senate Investigations and Government Operations Committee

Date of Last Action: 11/02/2011

Author: Stewart-Cousins (D)

Summary: Prohibits hiring discrimination by employers, employment agencies and licensing agencies based upon an individual's unemployment status.

05/05/2011 - Introduced.

05/05/2011 - To Senate Committee on Investigations and Government Operations.

11/02/2011 - Amended in Senate Committee on Investigations and Government Operations.

**NY A 7830 Hiring Discrimination By Employers**

2012 Status: Pending - Assembly Governmental Operations Committee

Date of Last Action: 01/18/2012

Author: Wright (D)

Summary: Prohibits hiring discrimination by employers, employment agencies and licensing agencies based upon an individual's employment status.

05/18/2011 - Introduced.

05/18/2011 - To Assembly Committee on Governmental Operations.

01/18/2012 - Amended in Assembly Committee on Governmental Operations.

**Ohio****OH H 424 Employment Discrimination Based on Unemployment Status**

2012 Status: Pending - House Commerce, Labor and Technology Committee

Date of Last Action: 01/24/2012

Author: Celeste (D)

Summary: Prohibits and provides a penalty for posting an advertisement of an employment position that discriminates on the basis of an individual's employment status.

01/24/2012 - Introduced.

01/24/2012 - To House Committee on Rules and Reference.

01/26/2012 - From House Committee on Rules and Reference: Recommended referral.

01/26/2012 - To House Committee on Commerce and Labor.

**Oregon****OR S 1548 Job Posting Restrictions**

2012 Status: Enacted

AUTHOR: Rosenbaum (D)

Date of Last Action: 03/27/2012

SUMMARY: Prohibits knowingly or purposefully publishing an advertisement by an employer, an employer's agent, representative, or designation, or employment agency, for a job vacancy that provides that the qualification include current employment, that a job application who is currently unemployed with not be considered or reviewed, and that only applications submitted by persons who are currently employed will be considered and reviewed; provides these provisions do not allow for a civil action against an employer.

02/01/2012 - INTRODUCED:

03/27/2012 - Signed by GOVERNOR.

03/27/2012 - Chaptered. Chapter No. 85

#### Pennsylvania

PA H 2157 Unemployment Status Discrimination Prohibition

2012 Status: Pending - House Labor & Industry Committee

Date of Last Action: 01/26/2012

Author: Boyle B (D)

Summary: Prohibits discrimination against persons based on employment status, provides for powers and duties of the Department of Labor and Industry, imposes penalties.

01/26/2012 - Introduced.

01/31/2012 - To House Committee on Labor and Industry.

#### South Dakota

SD S 184 Hiring Discrimination and Current Employment

2012 Status: Failed - Adjourned - Senate Commerce and Energy Committee

Date of Last Action: 01/26/2012

Author: Buhl (D)

Summary: Prohibits hiring discrimination on the basis of current employment status.

01/26/2012 - Introduced.

01/26/2012 - To Senate Committee on Commerce and Energy.

02/10/2012 - In Senate Committee on Commerce and Energy: Deferred to the 41st Legislative Day.

#### Tennessee

TN H 3757 Employees and Employers

2012 Status: Failed - Adjourned - House Committee on Consumer and Employee Affairs

Author: Turner M (D)

Summary: Prohibits discrimination in employment on the basis of an individual's status or history of unemployment.

02/02/2012 - To House Committee on Consumer and Employee Affairs.

02/06/2012 - In House Interim Committee on Consumer and Employee Affairs: Referred to General Subcommittee.

TN S 3130 Discrimination in Employment

2012 Status: Failed - Adjourned - Senate Commerce, Labor and Agriculture Committee

Date of Last Action: 01/25/2012

Author: Stewart E (D)

Summary: Prohibits discrimination in employment on the basis of an individual's status or history of unemployment.

01/25/2012 - Introduced.

01/30/2012 - To Senate Committee on Commerce, Labor and Agriculture.

03/28/2012 - In Senate Committee on Commerce, Labor and Agriculture: Referred to General Subcommittee.

#### Wisconsin

WI S 249 Employment Discrimination

2012 Status: Failed - Adjourned

Author: Hansen (D)

Summary: Prohibits employment discrimination based on employment status. Specifies that employment discrimination because of employment status includes an employer, employment agency, or other person refusing to hire or employ an individual because the individual is currently unemployed and printing or circulating any statement, advertisement, or publication that states or suggests that the qualifications for a job include currently being employed.

03/23/2012 - Failed to pass pursuant to Senate Joint Resolution 1.

WI A 344 Employment Discrimination

2012 Status: Failed - Adjourned

Author: Zamarripa (D)

Summary: Prohibits employment discrimination based on employment status; specifies that employment discrimination because of employment status includes an employer, employment agency, or other person refusing to hire or employ an individual because the individual is currently unemployed and printing or circulating any statement, advertisement, or publication that states or suggests that the qualifications for a job include currently being employed.

03/23/2012 - Failed to pass pursuant to Senate Joint Resolution 1.

## 2011 Legislation

New Jersey became the first state to pass a law prohibiting discrimination against the unemployed, during their 2011 session. The bill as originally passed was vetoed by the Governor, who expressed concerns about the law being overly broad. The legislature amended the law, based on those concerns, and passed an amended law, which was signed by the Governor.

Bills were also introduced during the 2011 legislation session in Illinois, Michigan, New York and Ohio. Below are links to the 2011 legislative bills.

**ILLINOIS**

[Illinois SB 2153](#)

**MICHIGAN**

[Michigan HB 4675](#)

[Michigan SB 606](#)

**NEW JERSEY**

[AB 3359](#) (as amended and passed by the Legislature following Governor's conditional veto.)

[New Jersey SB 2388](#)

[New Jersey Governor's Veto Message on AB 3359](#)

**NEW YORK**

[New York SB 5151](#)

[New York SB 5316](#)

[New York AB 7830](#)

**OHIO**

[Ohio SB 261](#)

**ADDITIONAL RESOURCES**

**Equal Employment Opportunity Commission (EEOC)**

The EEOC recently held a forum on the Issue, at the request of members of Congress.

[Meeting Summary](#) - February 2011

[Press Release](#)

**Congressional Bills**

[HR 2501](#) would bar employers with 15 or more employees from discriminating against the unemployed when posting job openings.

[S 1471](#) would prohibit employment status being used as a criteria in hiring or in advertising job openings.

**NCSL Resources**

[Main Unemployment Page](#)

[Unemployment Legislation Database](#) (2010, 2011 and 2012 legislative bills)

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