

Discrimination against Unemployed Job Applicants is Prohibited by New District of Columbia Law

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April 18, 2012

The first law in the nation to prohibit discrimination against job applicants who are unemployed has been enacted in the District of Columbia.

The Unemployed Anti-Discrimination Act of 2012, signed by Mayor Vincent C. Gray on March 19, 2012, makes it unlawful for all employers and employment agencies in the District to consider the unemployed status of an applicant in employment and hiring decisions. The new law, introduced by District of Columbia Council Chairman Kwame Brown, also bars employers and employment agencies from indicating in an advertisement for a job vacancy that unemployed individuals are disqualified for the position. The new law will become effective at the beginning of May 2012, following publication in the District of Columbia Register.

Coverage

The Act generally applies to all employers with at least one employee in the District of Columbia. An “employer” also includes “any person acting in the interest of” an employer, directly or indirectly.

Prohibitions

Under the Act, no employer or employment agency may:

- (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
- (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.

In addition, covered entities are prohibited from retaliating against an individual for opposing, filing a charge against, or giving information or testifying in a proceeding related to any practice made unlawful under the Act. Similarly, a covered entity may not “interfere with, restrain or deny” the exercise or attempted exercise of any right under the Act.

Activities Exempted

Employers and employment agencies are not prohibited from indicating in an advertisement for a job vacancy any other qualifications, 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.

Covered entities also may examine “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.” Furthermore, employers or employment agencies may indicate in advertisement for a job vacancy that “only applicants who are currently employed by the employer will be considered for employment.”

Enforcement and Civil Penalties

The new law does not provide for a private cause of action. Complaints must be submitted to the District of Columbia Office of Human Rights (“OHR”). The OHR will receive, review, and investigate complaints and is required to “respond to” the complaint within one month. The OHR shall assess

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civil penalties where it determines that an employer or employment agency has committed a violation of the Act. For a first violation, an employer or employment agency will be subject to a civil penalty of \$1,000 per claimant; for a second violation, \$ 5,000 per claimant; and for each subsequent violation, \$10,000 per claimant. Civil penalty are capped at a total of \$20,000 per violation. Any penalty collected by the Office will be distributed among any employee or potential employee who filed a claim regarding a violation of the Act.

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While the District of Columbia law is the first of its kind in the nation, it may not be the last. New Jersey and Oregon already prohibit advertisements for a job vacancies stating that the unemployed need not apply. In addition, the U.S. Equal Employment Opportunity Commission spotlighted the issue in a series of hearings in early 2011 to determine how to protect unemployed individuals from workplace discrimination.

Although the Act will not support private lawsuits and damages awards against employers, an organization charged with violating this law may find itself mired in an administrative process before the OHR with limited options for judicial review. Moreover, compliance may be complicated by the fact that some key terms in the law are unclear, including the definition of “status as unemployed” to mean an individual who “does not have a job, is available for work, and is seeking employment.” It is not clear how this definition applies to individuals who are self-employed, independent contractors or consultants. The Mayor is directed to issue regulations to implement this law; those rules may clarify some of the Act’s ambiguities.

The Act specifies that hiring decisions based on credentials, licenses, and education and training are valid; it even permits a company to examine the reasons underlying an individual’s unemployment status, so long as the unemployment status *itself* is not the basis for a hiring decision. Organizations that take care to avoid both actual and apparent discrimination based on unemployment, by ensuring they can articulate the lawful bases for all hiring decisions, should have no compliance problems with this new law. This is a general summary of the Act. Jackson Lewis attorneys are available to answer questions and assist in complying with the new law.

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