

NEW YORK CITY HUMAN RIGHTS LAW AMENDED TO ADD NEW PROTECTED CLASS: UNEMPLOYMENT STATUS

Labor & Employment Alert
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Practices & Industries

Labor & Employment

The New York City Council recently amended the New York City Human Rights Law by creating a new protected class: an applicant's unemployment status. See Bill 814-A. Effective June 11, 2013, New York City private employers that employ four or more employees will not be able to base an employment decision with regard to the "hiring, compensation, or the terms, conditions, or privileges of employment on an applicant's unemployment" status unless they have a "substantially job-related reason for doing so." However, nothing in the bill prohibits an employer from "inquiring into the circumstances surrounding an applicant's separation from prior employment" or considering or publishing job-related qualifications, such as those involving "a current or valid professional or occupational license...a minimum level of education or training, or a minimum level of professional, occupational, or field experience." The bill also prohibits employers from "publishing in print or in any other medium" an advertisement for a job vacancy that suggests current employment is a requirement or qualification for the job in question or that the employer "will not consider individuals for employment based on their unemployment."

Unlike jurisdictions such as New Jersey, Oregon, and the District of Columbia, where unemployment is also recognized as a protected class, Bill 814-A permits a person to bring a private action in court for damages, injunctive relief, and other appropriate remedies. Alternatively, a person may file a complaint with the New York City Commission on Human Rights, which may order an employer to hire the prospective employee or award back or front pay, compensatory damages, or injunctive relief. In addition, the commission may assess a civil penalty of up to \$250,000 for willful violations.

The bill specifically permits an adverse impact claim in addition to a disparate treatment claim. As the bill states, a disparate impact claim is established when the commission or a person demonstrates that the employer's policy or practice of not hiring the unemployed results in a statistically adverse impact on the group of unemployed persons and when the employer does not raise an affirmative defense that the "policy or practice has as its basis a substantially job-related qualification or does not contribute to the disparate impact."

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The Bottom Line for Employers

Since Bill 814-A may expose New York City employers to a spate of lawsuits by disappointed job seekers, it would be prudent for human resource professionals to undertake a review of their hiring and recruiting practices before the June 11 effective date. Specifically:

- (1) Review job advertisement and social media posts for any reference to “current” employment or “recent experience” as a qualification for the position
- (2) Insure that recruiters utilized by the employer do not screen out applicants, either manually or electronically, who are currently unemployed
- (3) Train interviewers to avoid questions that could lead to unlawful inquiries
- (4) Review and revise employment applications to avoid information requests regarding current employment
- (5) Determine if there are instances where “substantially job-related” reasons exist for discussion of unemployment status with an applicant and devise possible lawful inquiries
- (6) Keep a record of the hiring of unemployed persons to use in the defense of a claim

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