



NJ Closer to Prohibiting Discrimination Against Unemployed Applicants

Insights

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In the past month, a bill that would ban discrimination against unemployed job applicants has been moving through the New Jersey Legislature. Initially, two bills cleared the Assembly and Senate Labor Committees, but the Senate Bill has been substituted for the Assembly Bill. The Assembly recently passed the bill, and the Senate has not yet taken a final vote on the Assembly passed bill.

The bill amends a similar 2011 law and seeks to prohibit employers and their agents or designees from discriminating against job applicants based on their unemployed status. The 2011 law prohibited using ads that advised only employed applicants were allowed to apply. The current bill would cover a wider spectrum of actions and prohibit discrimination against the unemployed with respect to hiring, compensation, and the terms and conditions of employment.

The bill, however, does not prohibit employers or their agents, representatives, or designees from:

1. Asking about applicants' employment history and the circumstances surrounding separation from prior employment;
2. Considering any substantially job-related qualifications;
3. Determining that only applicants currently employed by an employer will be considered for employment or given priority; or
4. Considering an applicant's actual amount of experience.

The bill does not create an independent cause of action for individuals. It also bars evidence of violations from use in any legal action other than an enforcement action. The Department of Labor and Workforce Development has jurisdiction for enforcement of the 2011 law and will have it for enforcement of the proposed amendments to the law as well. The 2011 law provides for civil penalties in the range of \$1,000 to \$10,000, collectible by the Commissioner of Labor and Workforce Development, and those penalties would apply to the new violations contained in the bill.

Given that the Senate Bill (which was initially passed and sent to the Assembly in May) was substituted for the Assembly Bill, it is likely that the Senate will pass the current bill. At this time it is unclear if the Governor will sign the bill, but he did sign the bill banning discrimination against the unemployed in print or online ads in 2011. In the meantime, employers should review their hiring

processes and usual interview questions to determine if they will comply with the possible new requirements.