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# New York City Passes Legislation Prohibiting Employers from Discriminating Against the Unemployed

March 15, 2013

Effective June 11, 2013, employers in New York City will be prohibited from basing an employment decision with regard to hiring, compensation or the terms and conditions of employment on the fact that an applicant is unemployed, unless there is a "substantially job-related reason for doing so."

On March 13, 2013, the City Council overrode Mayor Bloomberg's veto of Local Law 14 of 2013, which amends the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 – 8-131 (the "NYCHRL"). Mayor Bloomberg said that he expected the legislation to "damage lots of small businesses," and explained "I can't think of any rational employer who wouldn't want to know what you've been doing for a period of time."

The new law applies to employers with at least four employees, counting independent contractors, and protects those who are "unemployed," defined as "not having a job, being available for work, and seeking employment." Employers are prohibited from basing employment decisions related to "hiring, compensation or terms, conditions or privileges of employment of an applicant's unemployment," unless "there is a substantially job-related reason for doing so." Employers are also prohibited from publishing, in print or any other medium, any advertisement for any job vacancy in New York City that contains any statement or indication "that being currently employed is a requirement or qualification for the job," or that the employer will not consider candidates "based on their unemployment."

Employers may inquire about "the circumstances surrounding an applicant's separation from prior employment," and are permitted to "consider any substantially job-related qualifications, including but not limited to: a current and valid professional or occupational license; a certificate, registration, permit or other credential; a minimum level of education or training; or a minimum level of professional, occupational or field experience. Employers may also consider only internal applicants, and may give preference to internal candidates. Compensation may be based upon the applicant's actual amount of experience.

In addition to a disparate treatment cause of action, the law specifically provides for a "disparate impact" cause of action, wherein a policy or practice of the employer which is not substantially job related results in a detrimental impact to unemployed applicants.

Local Law 14 does not apply to most public employers when acting pursuant to the Civil Service Law. It also does not apply to "the exercise of any right of an employer or employee pursuant to a collective bargaining agreement."

A person who believes he or she has been discriminated against may file an administrative complaint with the Commission, or may file a civil action in court of law.

Employers in New York City should review their employment applications, job listings, handbooks and all other policies to ensure that the documents do not convey any discrimination in hiring, compensation or other terms and conditions of employment based on unemployment. In addition, all human resource and supervisory staff should be trained to avoid statements that could indicate discriminatory intent and to avoid policies that could cause a disparate impact.

If you have any questions about this new law, or any other questions regarding labor and employment law issues, please feel free to contact any member of our Labor and Employment department: Gary Fishberg at 516-357-3703, Tom Wassel at 516-357-3868, Al Adelman at 516-357-3804, or Anna Vikse at 516-357-3788.

## Practices

- Civil Rights and Employment Litigation
- Labor and Employment

## Attorneys

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