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April 11, 2013

New York City Bans Employers from Discriminating Against the Unemployed

On March 13, 2013, the New York City Council overrode Mayor Bloomberg's veto of legislation prohibiting discrimination based on an individual's unemployment. Local Law 14 of 2013 amends the New York City Administrative Code to prohibit employers from basing employment decisions on an applicant's unemployed status. Individuals who believe that they have been discriminated against based on their unemployment are entitled to file an administrative complaint with the New York City Commission on Human Rights or to file a civil complaint seeking compensatory and punitive damages. The law takes effect on June 11, 2013.

Prohibition on Discrimination Against the Unemployed

The new law prohibits employers with at least four (4) employees (counting independent contractors), employment agencies and their agents from basing an employment decision with regard to "hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment." "Unemployment" is defined as "not having a job, being available for work, and seeking employment." New York City employers, employment agencies and their agents are further forbidden from publishing, in print or in any other medium, an advertisement for any job vacancy in the city which states that (i) current employment is a requirement or qualification for the job or (ii) individuals will not be considered for employment based on their unemployment.

Limited Exceptions

Limited exceptions to the general rule prohibiting consideration of an individual's unemployment apply. For instance, employers may lawfully (i) consider an applicant's unemployment where there is a "substantially job-related reason for doing so" or (ii) inquire into the "circumstances surrounding an applicant's separation from prior employment." Thus, an employer may consider job-related misconduct which led to an applicant's unemployment. Employers are also permitted to make employment decisions based on, or to publish job advertisements setting forth, "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." Further, employers may limit consideration for a given position to current employees of the employer and may set compensation or terms and conditions of employment based on an applicant's actual amount of experience.

Best Practices for Employers

In order to remain in compliance with the new law, employers should consider implementing the following procedures:

- inform all staff members charged with making employment decisions about the new law;

- train all interviewers to avoid making any statements that may indicate a discriminatory intent based on an applicant's unemployed status; and
- review all employment advertisements, applications, manuals and policies to ensure that they do not discriminate based on applicant's current unemployed status.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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