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New York City Passes Law Prohibiting Discrimination Against the Unemployed

Over a mayoral veto, the New York City Council has enacted a law that prohibits discrimination on the basis of employment status. Through this law, New York City offers expansive protections for unemployed job seekers by, among other things, permitting applicants to sue their potential employers for unemployment discrimination.

Effective June 11, 2013, an amendment to the New York City Human Rights Law (“NYCHRL”) will prohibit employers from discriminating against individuals based on unemployment status. “Unemployment” is defined as “not having a job, being available for work, and seeking employment.” With limited exceptions, the law prohibits an employer from basing employment decisions, such as hiring, compensation, or the terms, conditions, or privileges of employment, on an applicant’s unemployment status. Moreover, unless otherwise permitted by city, state, or federal law, advertisements for job vacancies cannot mandate that current employment is a job qualification or requirement or that an unemployed individual will not be considered for a position.

The law does provide for certain instances where employment status may be considered. For example, an employer may inquire into the circumstances surrounding an applicant’s separation from prior employment. Additionally, an employer may consider an applicant’s unemployment if there is “a substantially job-related reason” to do so.

It should be noted that the new law does not prohibit an employer from considering substantially job-related qualifications of an applicant. Specifically, an employer may consider whether a candidate has a current and valid professional or occupational license, permit, certificate, or registration; whether an applicant has a minimum level of education or training; or whether an applicant has a minimum level of professional,

*747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.cfk-law.com*

occupational, or field experience. Such experience may also be used as a basis to compute an employee's compensation and terms and conditions of employment. Moreover, an employer may include these same job-related qualifications in its advertisements for vacancies. Finally, the law permits an employer to limit the job search to those individuals currently in its employ and to give its employees priority with respect to the terms, conditions, or privileges of employment.

Under the new law, an individual who believes that he or she has been discriminated against on the basis of unemployment status may choose either to pursue a private lawsuit or to file a complaint with the New York City Commission on Human Rights, alleging disparate treatment or a policy or practice that has a disparate impact on unemployed individuals. If a violation is found, an employer could be ordered to hire the applicant and may be subjected to, among other things, awards of back pay, front pay, compensatory damages, punitive damages, and attorneys' fees.

The pending legislation brings with it potential for increased litigation. Therefore, over the coming months, employers should work with their Human Resources Departments to ensure that current or recent employment is not listed as a requirement on job advertisements or on employment applications. Additionally, employers should train interviewers to ask appropriate questions regarding an applicant's prior employment. Specifically, interview questions should emphasize job-related qualifications, such as the candidate's level of professional or occupational experience or job training. Although an interviewer may inquire about the circumstances surrounding the applicant's separation from prior employment, the interviewer should avoid asking about the applicant's job search or how long the applicant has been unemployed.

If you have any questions or need further guidance to ensure your business complies with this new law, please contact [Tina Grimshaw](#) at (212-758-7792) or any other attorney at the Firm.

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