

# ANDERSON KILL EMPLOYMENT LAW INSIDER

# ALERT

## It's Now Illegal to Discriminate Against the Unemployed in New Jersey

By Bennett Pine

Joining New York City (see *Employment Law Insider Alert*, March 2013), Oregon and Washington, D.C., on July 1, 2014, New Jersey passed legislation to prohibit employment discrimination on the basis of a job applicant's unemployment status. This expands existing New Jersey law — the first law on the subject — that prohibits employers from creating job postings or job advertisements that are limited to currently employed persons only. New Jersey Governor Chris Christie signed the original law in 2011 and is expected to approve the new legislation.

### Purpose

New Jersey state Senators Peter Barnes and Jim Whelan, sponsors of the legislation, explain:

The stigma of being unemployed can have a greater impact on whether or not someone gets an interview or a job offer than the person's qualifications or experience ... Unfortunately, employers assume that a long break in employment is a reflection of the candidate's inability to effectively do the work rather than a byproduct of a bad economy. ...

Being unemployed can have serious financial and emotional effects on any individual, particularly if it is for a long length of time, leaving them with a constant feeling of hopelessness and defeat when looking for a job. This pressure is often compounded by the fact that the longer someone is unemployed the more difficult it is for them to reenter the workforce.

**Who is Covered?** The law applies to all private and public sector employers and employment agencies in New Jersey.

**What is Prohibited?** The new law protects the unemployed by banning employers from basing decisions with regard to hiring, compensation or the terms, conditions or privileges of employment on the fact that the applicant is, or has been, unemployed.

**What is Permitted?** Nothing in the law prohibits an employer from *considering*, and employers may still *inquire* about, the *circumstances* of an applicant's separation from prior employment.

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In addition, employers may permissibly (i) base decisions and post advertisements identifying job-related qualifications, including a current and valid professional or occupational license or minimum level of education, training or experience; (ii) limit the applicant pool or give preference to only those currently working for that employer; and (iii) consider, or base compensation or terms and conditions of employment on, a person's actual amount of experience.

### Remedies Available

Employers are liable for civil penalties of \$1,000 for the first violation, \$5,000 for the second violation and \$10,000 for each subsequent violation, collectible by the New Jersey Department of Labor and Workforce Development.

There appears to be no private cause of action in New Jersey, unlike the New York City law.

### What New Jersey Employers Should Do

Clearly it would be prudent for employers to review all job advertisements and related materials and remove any language that states or suggests, in effect, that only currently employed individuals can apply or be considered.

Individuals who conduct job interviews should be made aware of the new law, and advised to eliminate job interview questions that focus on an applicant's present unemployed status. However, it certainly appears permissible to inquire about the reasons why the applicant left his/her last employment, and nothing prevents an employer from researching an applicant's background, employment history and criminal record. Of course, it is always advisable, as with all other employment discrimination protections, to focus the job interview and hiring process on the applicant's experience, training, education, skills and qualifications to perform the duties of the job, rather than questions encroaching on an individual's protected classification.

### Up Next

Similar legislation is pending in 15 other states.

### Conclusion

New Jersey employers should continue to make every effort to focus the job application process, and base hiring decisions, on the individual's education, skills, experience and other qualifications for the particular job sought, rather than on protected classifications or characteristics that are now extended to unemployment status. ▲

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