

One Minute Memo[®]



Employers Beware: Bill Protecting Unemployed Applicants Moves Through State Senate

By Christopher Lowe and Joshua D. Seidman

Last week the New Jersey Senate Labor Committee (“Committee”) approved bill S1440, aimed at preventing employers from discriminating against job applicants who are or have been unemployed. Specifically, the bill restricts employers, as well as their agents and representatives, from basing employment decisions regarding hiring, compensation, and the terms, conditions, or privileges of employment on an applicant’s unemployment history.

In addition to providing a layer of protection for unemployed job applicants, the bill also includes a range of fines that will be imposed on employers found in violation of the law. Potential fines start at \$1,000 for an employer’s first violation, increase to \$5,000 for a second violation, and cap at \$10,000 for each violation thereafter.

However, the situation is not all bad for employers. For instance, the bill does not prohibit employers from asking a job applicant questions surrounding his or her separation from previous employment. Moreover, employers will not be in violation of the bill if they a) base their employment decision on an applicant’s “job-related qualifications,” such as professional or field experience, training level, or relevant professional or occupational licenses, b) only consider or give preference to current employees in the application process, and c) use an applicant’s actual amount of work experience to determine his or her compensation level, as well as other terms and conditions of employment.

Notwithstanding these safe harbors, businesses are still concerned over the bill’s potential to create liability in situations where applicants freely disclose that they are unemployed during a job interview or resume, but fail to move on to the next stage of the hiring process.

An identical bill (A2910) is currently awaiting a vote by the state’s General Assembly Labor Committee. These bills, which still must be signed by Gov. Chris Christie before becoming law, continue recent attempts in New Jersey to reduce unemployment numbers and boost the rights of individuals who are unemployed. As we [previously reported](#), in January 2014 a New Jersey Appellate Division panel upheld the constitutionality of a state law which, generally prohibits employers from purposefully or knowingly publishing advertisements stating that job applicants must be currently employed to be considered for the position. Furthermore, the same day the Committee advanced bill S1440, it also advanced the “New Jobs for New Jersey Act” (S153), which seeks to provide tax credits to employers with 100 or fewer employees for hiring unemployed applicants.

Although bills S1440 and S153 still have hurdles to overcome before becoming law - we will be sure to inform you as any updates occur - New Jersey employers must be aware of this recent trend and continue monitoring new developments that could impact their businesses.

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