

To: Our Clients and Friends

June 4, 2013

New York City Bans Discrimination Against the Unemployed

The New York City Human Rights Law (“NYCHRL”) has recently been amended to prohibit discrimination based on being unemployed. The amendment is effective June 11, 2013.

“Unemployment” means “not having a job, being available for work, and seeking employment.” The new law prohibits an employer from basing “an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant’s unemployment.” The law also prohibits employment advertisements that require current employment as a qualification for employment or disqualify applicants based on unemployment. The law further prohibits policies and practices that have a disparate impact on unemployed persons unless the employer proves as an affirmative defense that the policy is based on a substantially job-related qualification or the policy or practice does not contribute to the disparate impact.

The new law expressly allows certain practices. An employer may

- limit job opportunities, and give priority, to its current employees;
- consider an applicant’s unemployment where there is a substantially job-related reason for doing so;
- inquire into the circumstances surrounding an applicant’s separation from prior employment;
- consider (and an advertisement may include) 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; and
- set compensation or terms or conditions of employment for a person based on that person’s actual amount of experience.

The law does not apply to the exercise of rights pursuant to a collective bargaining agreement.

The NYCHRL applies to employers that employ four or more individuals (whether as employees or independent contractors (who are not themselves employers)), where the challenged decision by an employer will have an impact in New York City. The NYCHRL provides for a broad range of remedies, including unlimited compensatory and punitive damages, and attorneys fees awards.

All employers that hire employees for positions based in New York City should immediately review their job advertisements, job applications, and hiring practices for compliance with the new law. Human resources employees, and others involved in the hiring process, should be advised of the new requirements. Employers should also consider reviewing their recordkeeping practices with respect to applications for employment, and the reasons why applicants were not considered for interviews or offered a position.

As with any new law, especially one that has limited precedents in other jurisdictions, there will be many questions regarding its application. For instance, does the law only prohibit considering current unemployment, or does it also prohibit taking into account past periods of unemployment? What is a substantially job-related reason for considering unemployment? Does the law protect New York City residents who apply for jobs in other states with employers based outside New York?

The employment attorneys in Bryan Cave's New York office are available to assist in complying with the law's requirements:

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