



Employment News Alert

April NewsFlash

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April 2011

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In New Jersey, Do You Still Have To Be 'Working' To Get 'Hired'?

First-of-its-Kind Law in the Nation Prohibits Employers from Advertising a Refusal to Hire Unemployed Candidates

As we first reported in a Special Alert in August 2010 when ENA came across an interesting blog post that examined the open job listings of some of the nation's more well-known employers, there seemed to be at that time an ever-increasing reliance by HR staff to advertise job positions that specifically and expressly excluded the *unemployed* from consideration. ENA's view on the issue back then was to proceed with caution in advertising job openings in this manner ... primarily because to do so could ultimately be deemed illegal if the advertisements were found to have had a "disparate impact" on minorities or other groups protected by our anti-discrimination laws.

SEMINAR ALERTS

ENA SEMINAR SERIES

REASONABLE ACCOMMODATIONS IN THE WORKPLACE

MODERATOR & SPEAKER: BRIAN E. CURTIS, ESQ.

Tuesday, May 10, 2011 – 6:00 pm to 8:00 pm

The Forge Inn & Conference Center, Woodbridge, NJ

NJ STAFFING ALLIANCE SEMINAR

HOW TO AVOID NEGLIGENT HIRING

SPEAKER: DAVID J. SPRONG, ESQ. – BECKER MEISEL LLC

Wednesday, May 18, 2011 – 8:00 am to 11:00 am

Sheraton Edison Hotel - Raritan Center, Edison, NJ

Soon after, a bill was introduced into the NJ Legislature that, if passed and signed into law, would make it illegal for employers to advertise in their job postings that the company would not consider hiring currently unemployed candidates.

After some 'tweaking', which we all now our Legislature and Governor are prone to do ... and sometimes in a rather aggressive way, Governor Christie signed into law a measure in which violators will face fines of up to \$1,000 for the first offense and \$5,000 for subsequent offenses if they post job openings — in print or online — that state that unemployed individuals will not be considered for, and cannot apply for, the position.

Fortunately for employers, the new law does have its practical limits, in particular that it does not make it illegal to consider the unemployed status of a job candidate as a factor in the hiring process. Employers also retain the right simply to refuse to hire unemployed job candidates, as the focus of the law is on what proponents say has been a 'chilling' effect on unemployed applicants in their job search efforts.

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The concern ENA has for NJ employers is in that murky part of the law known as enforcement. This is where, as is typical in NJ labor and employment law, it gets 'dicey'. It's also where interpretation may give new meaning to the actual written word in the statute. Will the New Jersey Department of Labor and Workforce Development (LWD) push enforcement beyond what is stated in the law? As an example, let's say that an employer has 2 applicants for a position, each of whom are roughly similar enough in education, work

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experience, and other relevant job requirements. One applicant is currently employed by a competitor across town while the other has been unemployed for about a year. Which is the better candidate? ENA suspects virtually all of our subscribers would hire the currently employed person, if for no other reason than simply because that applicant's experience is more recent. Is it discrimination to choose a candidate who is currently employed when that candidate's skills are more current and therefore more valuable and more relevant? Will LWD push enforcement into this arena? Even if the advertisement for the job opening was silent as to the employment status of the applicants, these are genuinely difficult questions for the hiring process which this new law does not address. Yes, its language limits the statute to advertising violations, but as any NJ employer knows, the interpretation and enforcement of the labor and employment laws in this State are almost never limiting to NJ workers.



As a final note to this Alert, and for the benefit of our ENA subscribers outside of New Jersey, you should be aware that this first-of-its-kind in the nation legislation has apparently prompted the U.S. Congress to act as well. Rep. Hank Johnson (D-Ga.) recently proposed federal legislation to amend the Civil Rights Act to identify unemployed persons as a protected group under the Act. The bill is apparently entitled 'The Fair Employment Act of 2011' and would make it illegal for an employer to refuse to hire or to reduce compensation based on an applicant's employment status. This is the one that ENA suggests its subscribers should keep their eye on ... you see the distinction in the NJ law and in the proposed federal legislation. The NJ Act prohibits *advertising* a refusal to consider unemployed applicants whereas the federal bill, if passed in its current form, would directly impact an employer's actual hiring decision. Dangerous!



Brian E. Curtis, Esq. and the firm of Becker Meisel LLC have the knowledge and expertise to help you navigate these issues and avoid fines, penalties, and potential lost revenues.

Reach out now!

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