

KD Alert: City Commission to Secretly Test Employer Hiring Practices

By Ellen R. Storch, Esq. and Aaron Solomon, Esq.
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A recent amendment to the New York City Human Rights Law requires the New York City Commission on Human Rights (the "Commission") to use undercover "testers" to investigate employer hiring practices. The new law directs the Commission to start sending pairs of "testers" to New York City employers, labor organizations, and employment agencies, beginning no later than October 1, 2015. The testers will apply for or ask about the same job. The testers will have similar credentials but will differ with respect to a characteristic protected under the New York City Human Rights Law. For example, the testers may have similar levels of experience, but one will be female and one will be male. If the testers detect what they perceive to be discriminatory treatment by employers, those employers will be referred to the Commission's law enforcement bureau.

A second amendment to the City law requires the Commission to start reporting to the Mayor and City Council information about the number of investigations and lawsuits the Commission initiated.

Given the Commission's new duty to report the results of its efforts, and its new requirement to conduct matched pair testing, New York City employers should anticipate increased scrutiny into their hiring practices. Managers must be trained on appropriate interview questions. Specifically, they must understand that not only are they prohibited from asking direct questions about protected characteristics, they must avoid questions that indirectly solicit information about those characteristics. Employers should also scrutinize their applications and other hiring documents to ensure that they don't require applicants to provide information that employers cannot (or should not) request.

KD's labor and employment law attorneys can assist employers in best practices in hiring, to avoid and minimize the likelihood of liability for discriminatory practices.