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KD Alert: "Un"- Employment Discrimination? New York City Employers May Soon Face New Discrimination Claims from Unemployed Applicants

By Keith Gutstein and Angel Sevilla
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Employers and business owners in New York City may soon face new claims of discrimination from out-of-work job applicants alleging they were denied jobs on the basis of their "unemployment status." The New York City Council recently passed Int. 814, a bill that would amend the New York City Administrative Code to prohibit businesses from using an applicant's unemployment status in any employment decision without a "substantially job related" reason. Businesses would also be prohibited from publishing job advertisements which require applicants to be presently employed.

While advocates laud the measure as a means to combat long-term joblessness and unemployment, critics, including New York City Mayor Michael Bloomberg, argue that the measure would ultimately hurt small businesses and lead to a rash of new lawsuits. Mayor Bloomberg is expected to veto the bill. However, in light of the overwhelming 44-4 vote in favor of the measure, the bill's sponsors have more than the sufficient number of votes they need to override a veto.

New Jersey, Oregon, and the District of Columbia have enacted similar laws that make it illegal for employers to disqualify out-of-work job seekers solely because they are unemployed. The New York City measure would provide the strongest protections to date, by allowing individuals to pursue individual claims if they believe that they have been the victim of unemployment discrimination.

While the legislation has not yet been enacted, employers should educate themselves now of their rights and obligations under the bill. Employers are well advised to avoid publishing advertisements and policies that make present employment as a prerequisite for consideration for a job opening. Under the bill, employers retain the right to consider the circumstances surrounding an applicant's separation or demotion from previous employment, and to impose requisite job requirements for a job opening, such as professional, educational, or licensing standards.

If you have questions about Int. 814, please contact Keith Gutstein. KD's Labor and Employment Law Group provides employers with guidance in formulating and implementing employment policies and decisions to stay ahead of new and often complex statutory regulations, and minimize their potential liability exposure.

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