

KD Alert: UNemployment Discrimination: NYC Employers First in Nation to Face Private Suits by the Jobless

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On March 13, 2013, the New York City Council voted to override Mayor Bloomberg's veto, and passed an amendment to the New York City Human Rights Law (HRL), prohibiting employers from discriminating against the unemployed.

New York City employers can now be held liable for employment discrimination if they consider an applicant's unemployment status when making hiring decisions, unless "there is a substantially job-related reason for doing so."

While other jurisdictions have passed similar laws in recent years, New York City's law is the first to provide applicants with a private cause of action to sue for unemployment discrimination. Successful plaintiffs can recover economic damages, damages for emotional distress, punitive damages, and an award for their attorneys' fees.

In order to comply with the new law, New York City employers are well advised to consider the following.

Exercise caution when interviewing unemployed candidates. The amended HRL permits employers to inquire "into the circumstances surrounding an applicant's separation from prior employment." However, if the applicant does not receive an offer, he could allege that such inquiries were evidence of discriminatory animus regarding his unemployed status.

When making a job offer to an unemployed applicant, give thought to whether the salary offered is less than what would be offered to an employed applicant. The amended HRL prohibits employers from considering an applicant's unemployment status when making any employment decision, including compensation decisions.

Job advertisements must be worded carefully. The new law allows advertisements to require that applicants hold current and valid professional or occupational licenses, certificates, permits or other similar credentials. The statute also permits employers to limit the applicant pool to those currently working for the employer. However, advertisements may not indicate that being currently employed is a requirement for a position.

For more information on this matter, please contact the attorneys in KD's Employment Law practice.

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