

Court Upholds New Jersey's Ban on Unemployment Discrimination in Job Advertisements

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New Jersey's law prohibiting discrimination against the **unemployed in job advertisements** – the first of a new crop of similar state and municipal laws – is constitutional, according to a recent New Jersey appeals court decision.

In June 2011, New Jersey passed N.J.S.A. 34:8B, which forbids employers from publishing ads (in print or online) stating or suggesting that current employment is a requirement for job consideration, or that applications will be accepted only from currently employed people. Two months later, Crest Ultrasonics, a cleaning equipment manufacturer, placed an advertisement in a New Jersey newspaper seeking a new service manager. The ad stated that applicants “must be currently employed.” In response to a citizen complaint regarding the ad, the New Jersey Department of Labor and Workforce Development investigated and fined Crest Ultrasonics for violating the new law.

Crest Ultrasonics appealed the decision to the New Jersey Appellate Division, arguing that the law infringed the company's right to free speech under the federal and New Jersey constitutions. The Appellate Division upheld the law, holding that it is “narrowly tailored to advance a limited, but nevertheless substantial, governmental objective in maximizing the opportunities for unemployed workers to have their qualifications presented to prospective employers.”

New Jersey's ban on publishing employment ads excluding the unemployed was the first of its kind in the nation and paved the way for other states, including Oregon and the District of Columbia, to pass similar laws. A California bill prohibiting unemployment discrimination in job advertisements was vetoed by the state's governor in 2012. New York does not have a state-wide ban on unemployment discrimination (although a bill to that effect is pending in the state legislature). However, in June 2013, New York City passed a law that not only prohibits discrimination against the unemployed but also grants them a private right of action to sue alleged violators for damages in court. See blog posting [here](#).

The trend towards prohibiting discrimination against the unemployed is likely to continue, and so employers should regularly review their job ads – including those placed on their behalf by recruiters – to ensure that they comply with these emerging laws.

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