

New Jersey Considering Ban on Employment Bias against Unemployment Status

Article By:

Richard J. Cino

Allison J. Vogel

The **New Jersey State Senate Labor Committee** by a 3-2 vote has advanced a bill prohibiting **employment discrimination** based on an applicant's **unemployment status**. If passed and signed into law, it could affect employer hiring and new hire pay decisions in the Garden State and expose employers to yet more claims of discrimination and potential liability.

Under the bill (S1440), employers would be prohibited from basing decisions with regard to hiring, compensation, or the terms, conditions, or privileges of employment on the fact that an applicant is, or has been, unemployed. Employers would not be prohibited, however, from:

- inquiring into the circumstances surrounding an applicant's separation from prior employment;
- considering substantially job-related qualifications;
- giving priority to applicants already employed by the company; or
- considering an applicant's actual amount of experience.

S1440 would supplement an existing New Jersey law that already prohibits employers from stating in job advertisements that unemployed applicants will not be considered for job vacancies. The law provides civil penalties of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. These penalties would apply to violations of S1440's provisions.

S1440 does not create a private right of action against employers. However, employer groups have pointed out that the bill may unintentionally expose employers to civil penalties when an applicant voluntarily discloses his or her unemployed status.

Should S1440 pass, training of management-level employees involved in the hiring process on the new requirements would be necessary. The bill, as written, prohibits a company from considering unemployment status when reaching decisions on compensation. Therefore, a consideration of the compensation an unemployed person would accept (as opposed to someone currently employed) may be unlawful. Comments or revisions from state legislators may address these issues as they

review the proposed law.

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National Law Review, Volume IV, Number 80

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