

"Unemployed Need Not Apply?" - Not Anymore In New Jersey

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Gone are the days when job ads in New Jersey read that ***NO UNEMPLOYED CANDIDATES WILL BE CONSIDERED.***

It is no longer lawful for New Jersey employers to advertise that unemployed job applicants will not be considered for a vacant position. Last month, Governor Christie signed legislation prohibiting discrimination against the unemployed in both print and internet advertising or job postings. The legislation is the first of its kind in the United States.

The legislation was revised to conform to a conditional veto by Governor Christie on January 6, 2011 after concerns arose as to the impact the legislation could have on New Jersey's already difficult business climate. Governor Christie wanted the bill revised to make clear that violation of the legislation would not create a private cause of action, leading to additional litigation by aggrieved job applicants. In addition, Governor Christie demanded that the fines as originally proposed, be reduced. The signed legislation calls for a penalty of \$1,000 for a first offense and \$5,000 for a second offense and \$10,000 for each subsequent offense. These fines will be payable to the New Jersey Department of Labor and Workforce Development and are not recoverable by aggrieved applicants.

The goal of the legislation was to minimize the hurdles facing unemployed individuals in New Jersey and require that employers seek candidates based on their education, skills and experience, rather than their current employment status. The legislation is intended to curb discrimination in job postings after an increasing number of postings have made clear that unemployed candidates would not be considered and conversely, that only employed candidates would be qualified.

Interestingly, the law does not go so far as to bar employers from denying a candidate based on their employment status. The distinction lies in the advertisement of job openings. Furthermore, the law does not seek to include unemployed individuals as members of a protected class under the Law

Against Discrimination leading to further remedies for unemployed job seekers. Federal legislation barring discrimination or refusal to hire a job applicant based on their employment status is currently pending in committee.