



New Jersey Prohibits Employers from Discriminating Against the Unemployed in Job Advertisements

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On March 29, 2011, New Jersey Governor Chris Christie signed into law a new statute that sanctions employers that publish job advertisements that discriminate against unemployed persons. Gov. Christie's approval came months after he conditionally vetoed the first version of the bill passed by the New Jersey legislature, recommending that several changes be made. The amended bill, which was signed into law, accurately reflects Gov. Christie's proposed changes. This new law, *N.J.S.A. 34:8B-1 et seq.*, goes into effect on June 1, 2011, and regulates all want ads published in print or on the Internet.

Specifically, the statute forbids an employer or employer's agent, representative or designee from "knowingly or purposefully" publishing a job advertisement containing one of three types of provisions:

- 1) That being currently employed is a job requirement;
- 2) That the employer will not consider or review job applications from those who are currently unemployed; or
- 3) That the employer will only consider the applications of those currently employed.

The new law does not apply if it would conflict with New Jersey civil service laws. For instance, *N.J.S.A. 11A:4-2* provides, under certain circumstances, for the filling of employment vacancies through promotional examinations. Because promotional lists only include current permanent civil service employees, unemployed persons would not be eligible to apply. Without a specific exception for civil service jurisdictions, however, job announcements for promotional opportunities under *N.J.S.A. 11A:4-2* would violate the new act and subject the appointing authority to civil penalties.

The statute does make clear that employers may still include in their advertisements that they seek applicants who possess certain other legally permitted qualifications, like obtaining a valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience. Further, the act does not prohibit employers from advertising that only job applicants who are currently working for that same employer will be considered.

Employers who violate the act are subject to civil penalties. First time violators face a fine of up to \$1,000, while a second violation carries a penalty of \$5,000. Each subsequent violation results in a \$10,000 fine. At the insistence of Gov. Christie, the act specifically provides that it does not create a private right of action for an aggrieved job applicant against a violating employer. Instead, the act



will be enforced by the Labor and Workforce Development Commissioner via summary proceeding pursuant to the Penalty Enforcement Law of 1999.

Perhaps following New Jersey's lead, Rep. Hank Johnson of Georgia introduced a similar bill on the federal level in March. Like the New Jersey act, the Fair Employment Act of 2011 would make it illegal for employers to advertise that job applicants must not be unemployed. However, the Fair Employment Act, which is still in committee, would go further by amending the Civil Rights Act to include unemployed persons as a protected class. Thus, the federal law would prohibit discriminating against the unemployed outright, rather than just in job advertisements.

In sum, New Jersey has prohibited employers in the state from knowingly or purposefully publishing, in print or online, any job advertisement that expressly discriminates against unemployed persons. This regulation does not reach employers' hiring decisions, but speaks only to want ads. No private right of action is created, but instead violators are subject to civil fines of up to \$1,000, \$5,000 or \$10,000 depending on how many violations the employer has accrued.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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