Proposal to Ban Unemployment Discrimination Heats Up

By Daniel Schwartz on February 24th, 2012

Two bills were introduced in the Connecticut legislature last week that would ban discrimination against individuals who are unemployed. Section 8 of Senate Bill 1 and Senate Bill 79 are identical in their provisions. They would apply to nearly all employers in the state.

The proposals would amend Conn. Gen. Stat. Sec. 46a-60(a)(6) to prohibit an employer, "except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against any individual because… the individual is unemployed."

The proposals would also add a new provision, Conn. Gen. Stat. Sec. 46a-60(a)(12) by making it a discriminatory practice:

(A) For any person or employer to refuse to consider for employment or refuse to offer employment to an individual on the basis that such individual is unemployed, except where such individual's employment in a similar or related job, for a period of time reasonably proximate to the hiring of such individual, is a bona fide occupational qualification reasonably necessary to successful performance of the job that is being filled, or (B) for any employment agency to refuse to consider or refer an individual for employment on the basis that such individual is unemployed, except where such individual's employment in a similar or related job, for a period of time reasonably proximate to the hiring of such individual, is a bona fide occupational qualification reasonably necessary to successful performance of the job that is being filled.

From a drafting perspective, the use of the phrase "reasonably" is designed to make it sound, well, reasonable. But in practice, what is "reasonable" would have to be determined on a case-by-case basis by a court — something that would expensive to litigate.

Earlier this week, the Commerce Committee at the Connecticut General Assembly held a public hearing on the bills to little fanfare. A few people submitted testimony regarding the bills.

(I'll leave it for someone else to explain why Senate Bill 79 was first referred to the Commerce Committee instead of the Labor & Public Employees Committee which traditionally handles such matters.)

The Connecticut Department of Labor Commissioner Glenn Marshall indicated his support for the provisions. Senator Donald Williams also submitted testimony in favor of the bill. The CHRO did not submit any testimony even though that agency would be ultimately responsible for such claims.

Not surprisingly, the CBIA is opposed to the measure. In testimony before the Committee, CBIA's Louis Bach said the provisions would increase the risks and costs of hiring in Connecticut. He went further:

A decision to elevate employment status to the same degree of protection as race, religion, or gender in civil rights statutes dilutes the significance of existing protections and works to open the door for an ever-expanding list of protected characteristics having less to do with preventing truly discriminatory hiring practices and more to do with removing an employer's legitimate discretion in hiring decisions.

Bach also said that the claims would be difficult to defend against because it would require no evidence of causation "nor does it require the establishment of some nexus between a hiring decision and an individuals's employment status, something that would be difficult to show in many cases."

We're still early in the legislative session but already these bills are something to keep an eye on.

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