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New Discrimination Law for NYC Employers

On March 13, 2013, the New York City Council passed Local Law 14, which amends the City's Human Rights Law (NYCHRL) to prohibit discrimination based on unemployment status.

The new law governs both advertising for job vacancies and the hiring process. Specifically, Local Law 14 prohibits all New York City employers from publishing job vacancy advertisements that state or indicate that either current employment is a requirement for the advertised position or that the unemployed need not apply.

The new law also bars employers from basing employment decisions related to hiring, compensation, or the terms, conditions, or privileges of employment on an applicant's unemployment status. The law defines the "unemployed" as individuals "not having a job, being available for work, and seeking employment." This portion of the new law applies only to employers with four or more employees. For the purposes of determining whether a given employer must comply, "employee" is defined as including individuals properly classified as independent contractors. Thus, an employer with two employees and two independent contractors would be considered as having four "employees" and the new law would apply to that employer.

Under the new law, certain employer decisions are explicitly treated as exceptions to the requirements of Local Law 14. For instance, employers are permitted to limit consideration for open positions to their current employees. Employers are also permitted to inquire into the circumstances of an applicant's separation from prior employment and to consider an applicant's unemployed status where there is a substantially job-related reason for doing so. This means that an employer is allowed to consider whether an applicant is unemployed because of misconduct or poor performance.

In addition, employers are permitted to make decisions with respect to hiring, compensation, or the terms, conditions, or privileges of employment based on the applicant's level of experience and other substantially job-related qualifications, including current and valid professional or occupational licenses; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

Individuals may enforce the new law through the existing enforcement procedures available under the NYCHRL. The NYCHRL allows individuals to bring a private civil suit, and provides for awards of compensatory damages, unlimited punitive damages, and attorney's fees and costs. Note that under New York City case law, not only are employers potentially liable, but individual employees or agents of the employer may also be found liable where the employee (1) has either an ownership interest in the employer or exercises control over personnel decisions or (2) has aided or abetted the discriminatory conduct.

The NYCHRL also permits individuals to file a complaint with the New York City Commission on Human Rights. The Commission can issue "cease and desist" orders, require back pay and front pay, and order payment of compensatory damages. Failure to comply with an order from the Commission could lead to a civil penalty of up to \$50,000 and additional civil penalties of \$100 per day. The Commission can also impose civil penalties of up to \$250,000 if employer actions are deemed willful, wanton, or malicious. Individual violations of an order from the Commission can be found guilty of a misdemeanor punishable by up to one year in prison or by a fine of up to \$10,000, or both.

The City Council passed Local Law 14 on March 13, 2013 overriding an earlier veto by Mayor Bloomberg. The Mayor has called the legislation "misguided" because it could have the practical effect of adding litigation, but not jobs. Despite opposition from the Mayor, the Council passed the controversial measure with a vote of 43-4.

The new law goes into effect on June 11, 2013.