

CLIENT ALERT: New York City Prohibits Discrimination Against Unemployed Job Applicants

On March 13, 2013, the city council of New York enacted legislation that prohibits discrimination against unemployed job applicants in New York City. The legislation (Local Law 14, 2013) provides that an employer “shall not base an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant’s unemployment.” The legislation specifically permits employers to consider any “substantially job-related qualifications, including but not limited to: a current and valid professional or occupational license; a certificate, registration, permit, or other credential; minimum level of education or training; or a minimum level of professional, occupational, or field experience.” The legislation also specifically permits employers to inquire “into the circumstances surrounding an applicant’s separation from prior employment.” The legislation also bars employers from posting in job advertisements that current employment is a requirement or that unemployed applicants will not be considered for a vacant position.

The legislation takes effect June 11, 2013. The legislation permits individuals to seek redress through a charge of discrimination with the New York City Human Rights Commission or in court. It has been reported that New York City is the first city in the United States where residents can pursue action in court to stop discrimination based on employment status. The legislation was passed over the veto of Mayor Bloomberg. “Hiring decisions frequently involve the exercise of independent, subjective judgment about a prospective employee’s likely future performance, and the creation of an ambiguous legal standard will make it harder for employers to make decisions that will benefit their businesses,” the mayor said.

Employers should be mindful of what they can, and cannot consider at the hiring stage, as well as what they can and cannot ask of job applicants. This legislation adds an additional consideration for employers in New York City. Employers are encouraged to contact their M&J attorney with questions concerning proper hiring practices.

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