

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

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LEGAL AND LEGISLATIVE UPDATE

by

Attorney Jim Reidy



Sheehan Phinney Bass + Green, Prof. Assn.

1000 Elm Street

Manchester, NH 03105-3701

(603) 627-8217

jreidy@sheehan.com

www.sheehan.com

Congress considers adding Unemployed Individuals as Protected Class Under Federal Discrimination Law

Our economy continues to struggle and unemployment statistics remain among the highest levels in decades. Some suggest that these statistics do not portray how bad things really are as many people are under-employed and others have simply given up looking or are no longer eligible even for extended unemployment benefits. Being out of work or under-employed can be financially and emotionally devastating to individuals and their families. Is that deserving of special protection under federal workplace discrimination laws? Some in Congress think so.

There is a bill pending in Congress, **H.R. 2501. Fair Employment Opportunity Act of 2011**: H.R. 2501, which, if enacted, would make it unlawful for employers to discriminate against job applicants based on their status as unemployed. The proposed law would amend Title VII by creating an entirely new category of individuals protected from employment discrimination and add “unemployed” to the existing protected classes of sex, race/color, religion, genetic information, disability, age, national origin and pregnancy.

Like Title VII, this Act would apply to employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The Act would also cover employment agencies, which are defined as any person who regularly undertake, with or without compensation, to procure employees for an employer or to procure opportunities for individuals to work as employees for an employer, as well as an agent of such a person and any person who maintains an Internet website that publishes advertisements or announcements of job openings for employees.

The Act defines the “unemployed” as individuals who do not have jobs but who are available and searching for work. If passed, the law would prohibit employers from refusing to consider or hire individuals based on their unemployed status. It would be unlawful for an employment agency to disqualify individuals for consideration, screening or referral for employment because they are unemployed. It also would prohibit job advertisements or announcements advising unemployed individuals not to apply or representing that the individuals unemployed status may disqualify them from consideration. Finally, the Act would provide remedies for individuals whom the employer or employment agency refused to hire, discharged, or in any other manner unlawfully discriminated against the individual based on their unemployed status.

The Act provides that the Equal Employment Opportunity Commission (“EEOC”) will enforce violations of the law in the same manner that the EEOC currently enforces violations under Title VII, including the same investigative and remedial practices

It should be noted that the Act expressly permits an employer or employment agency to consider an individual’s employment history, and the reasons underlying an individual’s status as unemployed, when assessing his or her ability to perform a job. The Act specifically states that employers may evaluate “whether an individual’s [recent] employment in a similar or related jobis job-related or consistent with business necessity.” Still, if this Bill becomes law employers would have another issue to be aware of and include in their hiring and screening practices.

This Bill bears watching. Stay tuned!

Note: This is general guidance and is no substitute for specific legal advice.