D.C. Bans Hiring Discrimination Against Unemployed

By former Associate Ethan Don

On March 6, 2012, the District of Columbia passed the Unemployment Antidiscrimination Act of 2012 ("UAA"), making it illegal for an employer or employment agency to discriminate based on a potential employee's status as unemployed. Specifically, no employer or employment agency may:

(1) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
(2) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
(B) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

The UAA also contains an explicit anti-retaliation provision. What the UAA does not do, however, is create a private cause of action for either an aggrieved or potential employee. Instead, the D.C. Office of Human Rights maintains the authority to investigate complaints of violations of the UAA and to take enforcement action, including assessing fines of up to $20,000 per violation.

This recently passed legislation does not preclude an employer from seeking to determine the underlying basis for a potential employee's unemployment. It appears as though factors relevant to why a potential employee became unemployed may also be used in a prospective employer's hiring calculus without running afoul of the UAA.

The UAA will go into effect after the 30-Day Congressional review period has lapsed and after it has been published in the D.C. Register. At that time, employers seeking to fill a position in the District of Columbia will have to remove or reword advertisements which exclude unemployed individuals from consideration for a position, and must not consider a potential employee's employment status in making hiring decisions.

Employers should also recognize that the UAA is not a one-off or outlier statute and that the prohibition could spread far beyond the District of Columbia. New Jersey has already passed a similar law, and Oregon and Chicago are considering similar actions. Congress is considering related legislation, a prohibition is included in President Obama's proposed American Jobs Act, and last year, the EEOC held a public hearing on the subject.

