



House of Representatives

File No. 697

General Assembly

February Session, 2014

(Reprint of File No. 402)

Substitute House Bill No. 5274
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2014

***AN ACT CONCERNING UNEMPLOYED INDIVIDUALS AND
DISCRIMINATORY HIRING PRACTICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this
2 section:

3 (1) "Employer" means any business owner, person, partnership,
4 corporation, limited liability company or association of persons acting
5 directly as, on behalf of or in the interest of such business owner,
6 person, partnership, corporation, limited liability company or
7 association in relation to employees. Employer includes the state, any
8 political subdivision thereof and any employment agency or
9 temporary help service;

10 (2) "Employment agency" means an employment agency, as defined
11 in section 31-129 of the general statutes, and any agent, representative
12 or designee of such employment agency;

13 (3) "Status as unemployed" means an individual's period of

14 unemployment, both past or present, regardless of duration; and

15 (4) "Temporary help service" means (A) a temporary help service, as
16 defined in section 31-129 of the general statutes, and (B) any agent,
17 representative or designee of such temporary help service.

18 (b) No employer shall:

19 (1) Publish in print, on the Internet or in any other medium, an
20 advertisement or announcement for any job vacancy in this state that
21 includes any provision stating or indicating that: (A) An individual's
22 status as unemployed disqualifies such individual for a job, (B) such
23 employer will not consider an individual for employment based on
24 such individual's status as unemployed, or (C) the qualifications for a
25 job include current employment;

26 (2) Disqualify an individual for employment based solely on such
27 individual's status as unemployed; or

28 (3) Request or direct an employment agency or temporary help
29 service not to refer an individual based solely on such individual's
30 status as unemployed.

31 (c) No employment agency or temporary help service shall:

32 (1) Publish in print, on the Internet or in any other medium, an
33 advertisement or announcement for any job vacancy in this state that
34 includes any provision stating or indicating that: (A) An individual's
35 status as unemployed disqualifies such individual for a job, (B) an
36 employer will not consider an individual for employment based on
37 such individual's status as unemployed, or (C) the qualifications for a
38 job include current employment;

39 (2) Limit, segregate or classify an individual in any manner that may
40 limit such individual's access to information about jobs or referrals for
41 consideration of jobs because of such individual's status as
42 unemployed; or

43 (3) Disqualify or refuse to refer an individual for employment based
44 solely on such individual's status as unemployed.

45 (d) Nothing in this section shall be construed to prohibit an
46 employer, employment agency or temporary help service, or an agent,
47 representative or designee of such employer, employment agency or
48 temporary help service, from:

49 (1) Publishing in print or on the Internet an advertisement for a job
50 vacancy in this state that contains any provision: (A) Setting forth
51 qualifications for a job vacancy, including, but not limited to: (i)
52 Holding a current and valid professional or occupational license,
53 certificate, registration, permit or other credential, or (ii) a minimum
54 level of education or training, or professional, occupational or field
55 experience; or (B) stating that only individuals who are current
56 employees of the employer will be considered for such job vacancy;

57 (2) Setting forth qualifications for a job vacancy, including, but not
58 limited to: (A) Holding a current and valid professional or
59 occupational license, certificate, registration, permit or other credential,
60 or (B) a minimum level of education or training, or professional,
61 occupational or field experience;

62 (3) Stating that only individuals who are current employees of the
63 employer will be considered for such job vacancy;

64 (4) Taking into account the individual's employment history,
65 including recent relevant experience; or

66 (5) Inquiring as to the reasons for an individual's status as
67 unemployed.

68 (e) Any individual aggrieved by a violation of subsection (b) or (c)
69 of this section may file a complaint with the Labor Commissioner. Any
70 employer, employment agency or temporary help service that the
71 commissioner finds to be in violation of subsection (b) or (c) of this
72 section may be liable to the Labor Department for a civil penalty of not

73 more than five hundred dollars for the first violation of subsection (b)
74 or (c) of this section and not more than one thousand dollars for each
75 subsequent violation of said subsections. In setting a civil penalty for
76 any violation in a particular case, the Labor Commissioner shall
77 consider all factors that the commissioner deems relevant.

78 (f) The Attorney General, upon complaint of the Labor
79 Commissioner, shall institute civil actions to recover the penalties
80 provided for under subsection (e) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Attorney General	GF - Potential Cost	Zero to 10,000	Zero to 10,000
Labor Dept.	GF - Potential Revenue Gain	Less than 5,000	Less than 5,000

Municipal Impact: None

Explanation

The bill prohibits various employment-related actions if they are based solely on a person's status as unemployed, and establishes a civil penalty of \$500 for the first offense and \$1,000 for subsequent offenses. This results in a cost of zero to \$10,000 annually beginning in FY 15 to the Office of the Attorney General for potential litigation costs related to the recovery of penalties established under the bill. This also results in a potential General Fund revenue gain of less than \$5,000 annually beginning in FY 15 to the Department Of Labor, which may levy the civil penalties established under the bill.

The actual cost and revenue gain associated with the bill are dependent on: 1) the number of complaints received and civil penalties levied by the Labor Commissioner and 2) whether the Attorney General brings action to recover any penalties levied. Based on the results of a similar law in New Jersey, it is anticipated that the number of violations and subsequent recoveries will be fewer than five in any given year.

House "A" makes definitional changes and eliminates the appeals

process for civil penalties levied under the bill.

Background

According to the New Jersey Department of Labor's Division of Wage and Hour Compliance, the Division has had one alleged violation since the law was passed in 2011. The assessment was appealed and is currently being upheld in the Superior Court Appellate Division pending a decision.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The annualized ongoing revenue impact identified above would remain constant into the future as penalty amounts are set by statute and are not subject to inflation.

Sources: New Jersey Department of Labor Division of Wage and Hour Compliance

OLR Bill Analysis**sHB 5274 (as amended by House "A")******AN ACT CONCERNING UNEMPLOYED INDIVIDUALS AND DISCRIMINATORY HIRING PRACTICES.*****SUMMARY:**

This bill prohibits employers, employment agencies, and temporary help services from taking several actions if they are based solely on a person's "status as unemployed" (i.e., his or her past or present unemployed periods, regardless of their duration). The actions include (1) disqualifying a person from employment, (2) refusing to refer a person for employment (or requesting that he or she not be referred), and (3) limiting a person's access to information about a job.

The bill also prohibits employers, employment agencies, and temporary help services from publishing job advertisements or announcements in any medium that state or indicate that (1) a person's status as unemployed disqualifies him or her for a job, (2) an employer will not consider a person for a job based on his or her status as unemployed, or (3) the qualifications for the job include current employment.

The bill specifies that it does not prohibit employers, employment agencies, or temporary help services from taking certain other actions, such as (1) requiring job applicants to hold valid licenses, registrations, or other credentials; (2) considering a person's employment history, including recent relevant experience; or (3) asking about the reasons behind a person's unemployment.

It also allows anyone aggrieved by a violation of its prohibitions to file a complaint with the labor commissioner, who can issue a \$500 fine against first-time violators and a \$1,000 fine for each subsequent

violation. The bill requires the commissioner to consider all factors she deems relevant in setting the fine. The commissioner may issue the fine without giving notice or holding a hearing, and the party who is fined does not have the right to appeal. The commissioner can ask the attorney general to bring an action in civil court to recover the fines.

*House Amendment "A" (1) removes websites that publish job openings from the definition of employment agency, (2) expands the prohibition on publishing job advertisements and announcements to include those that state or indicate that qualifications for a job include current employment, and (3) removes the violators' appeals process included in the underlying bill.

EFFECTIVE DATE: October 1, 2014

PROHIBITED ACTIONS

Employers

The bill prohibits employers from (1) disqualifying a person for employment solely because of the person's status as unemployed or (2) requesting that an employment agency or temporary help service not refer a person solely because of his or status as unemployed. Employers covered under the bill are any business owner, person, partnership, corporation, limited liability company (LLC), or association of persons acting directly as, on behalf of, or in the interest of an employer in relation to employees, including the state, its political subdivisions, employment agencies, and temporary help services.

Employment Agencies and Temporary Help Services

The bill prohibits employment agencies and temporary help services from (1) disqualifying or refusing to refer a person for employment solely because of the person's status as unemployed or (2) limiting, segregating, or classifying a person based on his or her status as unemployed, in a way that limits his or her (a) access to information about a job or (b) job referrals.

An employment agency under the bill is a business that receives compensation for procuring or offering to procure work for people seeking employment. A temporary help service under the bill is a (1) person, company, society, association, LLC, or corporation with a business that directly employs people to furnish part-time or temporary help to others or (2) such a service’s agent.

LIMITS ON BILL’S PROHIBITIONS

The bill specifies that it does not prohibit an employer, employment agency, temporary help service, or any of their agents, representatives, or designees from:

1. establishing minimum job qualifications, such as (a) holding a current and valid professional or occupational license, certificate, registration, permit, or other credential or (b) meeting minimum education, training, and experience levels;
2. stating that only the employer’s current employees will be considered for a job;
3. publishing job advertisements in print or on the Internet that (a) present the job’s minimum qualifications or (b) state that only the employer’s current employees will be considered for a job;
4. considering a person’s employment history, including recent relevant experience; or
5. asking for the reasons behind a person’s past or present unemployment periods.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/20/2014)

Judiciary Committee

Joint Favorable

Yea 18 Nay 12 (04/17/2014)