



House of Representatives

General Assembly

File No. 40

February Session, 2014

Substitute House Bill No. 5054

House of Representatives, March 19, 2014

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING UNEMPLOYED JOB SEEKERS.

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 an employer in relation to
6 employees, including the state and any political subdivision thereof
7 and shall include an employment agency or temporary help service;

8 (2) "Employment agency" means (A) an employment agency as
9 defined in section 31-129 of the general statutes, (B) an agent of such
10 employment agency, (C) a person who maintains an Internet web site
11 that publishes advertisements or announcements of job openings, and
12 (D) a temporary help service;

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 temporary help service as
16 defined in section 31-129 of the general statutes and shall include any
17 agent 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: (A) Stating or indicating that an individual's
22 status as unemployed disqualifies the individual for a job, or (B)
23 stating or indicating that an employer will not consider an individual
24 for employment based on that individual's status as unemployed;

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

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

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

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

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

41 (3) Disqualify or refuse to refer an individual for employment based

42 solely on the individual's status as unemployed.

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

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

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

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

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

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

66 (e) Any individual aggrieved by a violation of subsection (b) or (c)
67 of this section may file a complaint with the Labor Commissioner. The
68 Labor Commissioner may levy a civil penalty against any employer,
69 employment agency or temporary help service that the commissioner
70 finds to be in violation of subsection (b) or (c) of this section. Any
71 employer, employment agency or temporary help service that violates
72 any provision of this section may be liable to the Labor Department for

73 a civil penalty of five hundred dollars for the first violation of
74 subsection (b) or (c) of this section and for each subsequent violation of
75 said subsections may be liable to the Labor Department for a civil
76 penalty of one thousand dollars.

77 (f) Any party aggrieved by the decision of the commissioner may
78 appeal the decision to the Superior Court in accordance with the
79 provisions of chapter 54 of the general statutes.

80 (g) The commissioner may request the Attorney General to bring an
81 action in the Superior Court to recover the penalties levied pursuant to
82 subsection (e) of this section.

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

Statement of Legislative Commissioners:

In (a)(2) of section 1, subparagraphs (A) to (D), inclusive, were inserted for clarity.

LAB Joint Favorable Subst. -LCO

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
Labor Dept.	GF - Potential Cost	Less than 1,000	Less than 1,000

Municipal Impact: None

Explanation

The bill prohibits various enumerated 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, as well as a potential cost of less than \$1,000 annually beginning in FY 15 to the Department of Labor (DOL) related to the administrative hearing process. This also results in a potential General Fund revenue gain of less than \$5,000 annually beginning in FY 15 to DOL, 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, 2) whether any such penalties are appealed, and 3) 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.

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 and 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**HB 5054*****AN ACT CONCERNING UNEMPLOYED JOB SEEKERS.*****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 the job or (2) an employer will not consider a person for the job based on his or her status as unemployed.

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 commissioner can ask the attorney general to bring an action in civil court to recover the fines. Parties can appeal the commissioner's decision to the Superior Court.

EFFECTIVE DATE: October 1, 2014

PROHIBITED ACTIONS

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.

The bill prohibits employment agencies (including Internet websites that advertise job openings) 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 (1) a business that receives compensation for procuring or offering to procure work for people seeking employment, (2) any agent of such a business, (3) a person who maintains an Internet web site that publishes job advertisements or announcements, or (4) a temporary help service. 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

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 3 (03/04/2014)